



CITY COUNCIL AGENDA REPORT

MEETING DATE: January 20, 2009

ITEM NUMBER: VI-16

SUBJECT: AMENDMENT OF NESTOR RED LIGHT CAMERA AGREEMENT

DATE: JANUARY 8, 2009

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399

RECOMMENDATION:

That the Council approve Addendum Number Four to the Nestor agreement.

BACKGROUND:

The purpose of this item is to approve a short amendment to the Nestor Red Light Camera agreement. The Appellate Division of the Superior Court issued a judgment on November 21, 2008 dismissing a red light camera citation issued by another City. The Appellate Panel judge concluded that a provision in the other City's contract improperly gave a financial incentive to Nestor to increase the number of citations issued and paid through the use of the red light camera equipment. While the City involved in that decision is evaluating whether any steps can or should be taken with respect to the Judgment, we recommend that a similar provision in Costa Mesa's contract with Nestor to the one which the court found objectionable be suspended in its operation until the decision is corrected or a revised contract provision can be negotiated.

ANALYSIS:

The Council approved a contract amendment to the Nestor agreement, referred to as Addendum Number Three, in June 2008. Part of that addendum included a provision for an annual financial review of the red light camera safety program, with the parties agreeing to renegotiate service fees and/or take other steps to insure that the program operates as a safety program. This is the portion of the Agreement similar to that which the appellate division's ruling addressed, determining that the language "indirectly ties" fees to Nestor to the revenue generated by the program. While the other City assesses what steps it may take with respect to the ruling, we felt it would be prudent and appropriate to suspend the language to which the Court objected and provide alternative language to be included in the agreement to meet the City's needs of ensuring the program operates as intended.

While we do not know what the ultimate outcome of the other city's case might be, we do want to ensure that our contract with Nestor contains corrective language, should it ultimately be determined that the current language violates the provisions of the California Vehicle Code. We have therefore negotiated with Nestor the terms of Addendum Number Four to revise the language in the final paragraph of section 4.1 of the Agreement. Although Nestor is not the party who assesses the data generated by the camera and determines whether or not to issue tickets, the goal of this addendum is to eliminate any concern that Nestor has a financial incentive to generate additional tickets for review and issuance by City police officers. We therefore recommend that the Council approve Addendum Number Four to the Nestor Agreement. Nestor's representatives have already approved and executed the Addendum.

ALTERNATIVES CONSIDERED:

The Council could determine not to adopt, or it could alter or amend the proposed addendum.

FISCAL REVIEW:


There should be no fiscal impact from adoption of the addendum.

LEGAL REVIEW:

The City Attorney's office has prepared the proposed contract revision.

CONCLUSION:

The Council is requested to Adopt the proposed Addendum to take effect immediately.


ALLAN L. ROEDER
City Manager


KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Existing Nestor Agreement
2 Proposed Addendum Four

File Name

Date

Time

NESTOR TRAFFIC SYSTEMS, INC.

MUNICIPALITY OF
COSTA MESA, CALIFORNIA
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM
SERVICES AGREEMENT

This TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM SERVICES AGREEMENT (the "Agreement") made this 15th day of July, 2002 ("Effective Date"), by and between Nestor Traffic Systems, Inc., a Delaware corporation, having a place of business at 400 Massasiot Avenue, Suite 200, Providence, RI 02914-2020 ("Nestor"), and the City of Costa Mesa, a municipal corporation of the State of California, having an address of 77 Fair Drive, P.O. Box 1200, Costa Mesa, CA 92628-1200 (the "Municipality" and together with Nestor, the "Parties," and each singularly, a "Party").

WHEREAS, the Parties desire to enter into this Agreement, whereby Nestor will (i) install and maintain a traffic signal violation detection system (the "System") at the intersections located within the Municipality indicated on Exhibit A attached to this Agreement, and provide to the Municipality the services (the "Services"), all as more fully described on Exhibit A, and (ii) in connection with the Services, license certain software and lease certain equipment to the Municipality.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

I. SERVICES

1.1 Nestor agrees to use commercially reasonable efforts to provide to the Municipality the Services, as more fully described in Exhibit A. To the extent set forth in Exhibits A, B, and C, the Services shall include:

- (i) the equipment (the "Equipment") and software (the "Software"), to be supplied and installed by Nestor in accordance with Exhibit A;
- (ii) violation processing services;
- (iii) training of Municipality personnel involved with the operation of the System and/or the disposition of "Citations" (as that term is defined in Section 3.1 of Exhibit A); and
- (iv) other support services for the System.

1.2 If and to the extent the Municipality has or obtains during the Term (as hereinafter defined) custody, possession or control over any of the Equipment or Software, the Municipality agrees:

- (i) such Software, if manufactured by Nestor, is supplied under the license set forth in Exhibit B (the "License") to which the Municipality agrees; and
- (ii) such Equipment is supplied under the lease terms set forth in Exhibit C (the "Lease") to which the Municipality hereby agrees.

1.3 The Municipality understands and agrees that (i) Nestor may subcontract with third parties for the provision or installation of part or parts of the System or Services and (ii) installation of the System requires the Municipality's cooperation and compliance with Nestor's instructions (including but not limited to

Municipality's provision of the personnel, equipment, engineering plans, and other resources as described in Exhibit A or as otherwise reasonably requested by Nestor) and access by Nestor (or such third parties) to Municipality premises and systems and the Municipality agrees to provide all of the foregoing to Nestor. The Municipality further agrees that the dates of installation and activation of the System set forth in Exhibit A are subject to conditions beyond the control of Nestor. In the event Nestor should subcontract provision or installation of part or parts of the System, Nestor shall require each such subcontractor to provide insurance in favor of Municipality in the amounts, and in conformance with the requirements, set forth in Section 8.

1.4 The Municipality understands and agrees that the System will be owned by Nestor (or its designees). The Municipality agrees to indemnify and hold Nestor harmless for and from any damage to the System caused by the Municipality or any of the Municipality's employee's, agents, or independent contractors (other than Nestor). The Municipality agrees that it will use reasonable efforts to assist Nestor to identify and obtain compensation from any third party who is responsible for damage to the System or any part thereof.

2. TERM

The initial term of this Agreement, the License and the Lease shall begin upon the Effective Date of this Agreement and shall continue until the fifth (5th) anniversary of the "Installation Date" (the "Initial Term"). Thereafter, this Agreement, the License and the Lease shall continue in effect on a month to month basis, unless either Party shall have provided ninety (90) days prior written notice to the other Party of such Party's intention to terminate this Agreement, the License and the Lease (the "Renewal Term" and together with the Initial Term, the "Term"). The "Installation Date" shall be the latest date that the System becomes installed and operational at any of the intersections described in Sections 1.1 or 1.2 of Exhibit A; provided, however, that in the event the Municipality elects to opt out of Phase 2 or Phase 3, as described in Section 1.3 of Exhibit A, the Installation Date shall be the date the last of the intersections in Phase 1 or Phase 2, as applicable, was installed and activated.

3. TERMINATION AND EXPIRATION

3.1 This Agreement may be terminated by either Party if the other Party defaults in the performance of any obligation under this Agreement and such default continues for more than thirty (30) days after notice thereof to the defaulting Party. Termination of this Agreement pursuant to this Section 3.1 shall not relieve the breaching Party of any liability it may have under this Agreement or pursuant to law to the non-breaching Party.

3.2 If this Agreement is terminated by Nestor pursuant to Section 3.1, the Municipality shall be responsible and pay to Nestor on demand the termination and cancellation fee set forth in Section 4.3(i).

3.3 If this Agreement is terminated by Municipality pursuant to Section 3.1, Municipality shall not be required to pay to Nestor any termination or cancellation fee.

3.4 Nestor may terminate this Agreement, or its provision of any Service or any part of the System, without liability, and with no termination or cancellation fee charged to Municipality, on thirty (30) days advance notice, if Nestor concludes in its sole discretion that potential or actual liability of Nestor to third parties arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.

3.5 Upon termination or expiration of this Agreement, the Municipality shall immediately cease using the Software and Equipment in its possession, custody or control and shall (a)(i) immediately deliver to Nestor such Equipment and (ii) immediately deliver to Nestor or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of such Software in whatever form and any written or other materials relating to such Software in the Municipality's possession, custody or control and within thirty (30) days deliver

to Nestor a certification thereof or (b) allow Nestor access to the system(s) on which such Software is loaded and permission to Nestor to remove such Equipment and Software. Termination or expiration of this Agreement shall not relieve the Municipality of any obligation to pay fees or other amounts due or accrued prior to such installation or termination. This Section 3.5, as well as Sections 3.2, 6.2, 6.3, 6.4, 7 and 9 of this Agreement, Sections 4, 7, 8 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease.

3.6 Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in the last sentence of Section 3.5, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

3.7 If at anytime automated red light enforcement no longer is legal in the State of California, or its continued use may impair Municipality's access to federal funding or other benefits to which it might otherwise be entitled or eligible, this Agreement may be terminated by the Municipality subject to any termination and cancellation fee due pursuant to Section 4.3(ii).

3.8 If at anytime, the statutorily assessed fine amount allocated to the Municipality (currently \$137.69) falls below Ninety-Five Dollars (\$95.00) and as a result either Party concludes that potential or actual liability arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue, this Agreement may be terminated by either Party subject to any termination and cancellation fee due pursuant to Section 4.3(ii).

3.9 If for any reason Municipality determines, in Municipality's sole and absolute discretion, that it is in the Municipality's best interest to terminate this Agreement, Municipality may, upon thirty (30) days prior written notice to Nestor, cancel this Agreement subject to any termination and cancellation fee pursuant to Section 4.3(i).

4. FEES AND PAYMENT

4.1 After issuance of the first "Citation" (as that term is defined in Section 3.1 of Exhibit A) issued under the System, the Municipality shall pay Nestor a monthly fee ("Monthly Fee"). The Monthly Fee shall be the greater of the amounts determined pursuant to Section 4.1(i) and Section 4.1(ii) below.

(i) A Citation fee equal to Sixty Nine Point Five percent (69.5 %) (currently \$95.70) of the aggregate statutorily assessed fine amount allocated to the Municipality (currently \$137.69), subject to a minimum per Citation fee of Fifty-Five Dollars (\$55.00) (the "Minimum Per Citation Fee") for each Citation issued by the System that receives a Final Disposition. As used herein, "Final Disposition" means, with respect to an issued Citation: (a) the payment, in full or part, of the assessed fine, including bail forfeitures, with respect to such Citation, or (b) if adjudicated, a final disposition from a court is received other than a dismissal resulting from a lack of evidence.

(ii) A fee equal to the greater of: (a) the monthly fee as calculated per Section 4.1(i), and (b) the "Monthly Minimum." The "Monthly Minimum" shall equal Three Thousand Three Hundred Thirty-Six Dollars and Seventy-Five Cents (\$3,336.75) times the number of "Installed Approaches" monitored during the month in question (partial months shall be pro rated). "Installed Approach" shall mean an approaching direction of travel on any individual access road or street to any intersection that is monitored by the System. On a monthly basis the total Monthly Minimum will be calculated as an aggregate of all Installed Approaches. If and to the extent that (1) an Installed Approach subject to a Monthly Minimum is not capable of detecting violations and/or issuing Transmitted Violations, or (2) Nestor is unable to print and/or mail Citations, for more than five (5) consecutive days in any calendar month as a result of system malfunctions not caused by the

Municipality or an event described in section 9.9 of the Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the Monthly Minimum for that month equal to: the respective approach's, or the System's (as applicable) Monthly Minimum multiplied by the total number of days the System was incapable of detecting violations, issuing Transmitted Violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days.

4.2 [Intentionally Omitted.]

4.3 Municipality acknowledges and agrees that:

(i) In the event this Agreement is terminated by Nestor pursuant to Section 3.1, or the Municipality pursuant to Section 3.9 prior to the expiration of the Initial Term, the termination and cancellation fee shall equal the product of (a) the Monthly Minimum as calculated in Section 4.1(ii) multiplied by (b) the Remaining Term. The "Remaining Term" shall equal the number of months in the Initial Term of this Agreement from the Installation Date (i.e., 60 months) minus the number of whole months from the Installation Date to the date of termination.

(ii) In the event this Agreement is terminated pursuant to Section 3.7, or 3.8, prior to the expiration of the 36 month anniversary of the Installation Date, the termination and cancellation fee shall be fifty percent (50%) of the termination and cancellation fee as calculated pursuant to Section 4.3(i) except that the "Remaining Term" shall equal 36 months minus the number of whole months from the Installation Date to the date of termination.

4.4 Except for any termination and cancellation fee and other charges owed pursuant to Sections 4.3 or 5.5, which is due on demand, payment of all fees and other charges owed pursuant to this Agreement is due within thirty (30) days after invoice date. Invoices will be sent to the Municipality at:

City of Costa Mesa
77 Fair Drive, P.O. Box 1200
Costa Mesa, CA 92628-1200
Attn: Chief of Police

4.5 Unless the Municipality provides Nestor with evidence of an exemption therefrom, prices do not include federal or state excise, sales, use or other similar taxes or charges. The Municipality agrees to indemnify and hold harmless Nestor from any liability arising out of any such tax or charge if charged against Nestor. If incurred, such taxes or charges may be invoiced at any time.

5. RESPONSIBILITIES OF THE MUNICIPALITY

5.1 The Municipality shall provide Nestor with such "as built" drawings as Nestor, in Nestor's sole discretion, may require for the preparation of drawings for the installation of the System and shall process Nestor's engineering drawings without unusual or unreasonable cost or delay.

5.2 The Municipality shall not levy any permit fees or, if municipal ordinance requires the assessment of fees, the Municipality shall waive or be responsible for such fees associated with the installation of the System.

5.3 The Municipality acknowledges that Nestor has entered into this Agreement with the expectation that the Municipality will diligently follow all procedures to forward each Citation for prosecution. To the extent that is customary and usual in the Municipality's current practice, the Municipality further agrees to cooperate in the prosecution, provide the necessary witnesses therefore, and to defend the issuance of traffic violations, the use of the System in the issuance of any particular Citation, the validity of the results of the

System in the issuance of said Citation and/or the use of the U.S. Mails to deliver said Citation. Nestor may, at its own expense, participate in any proceeding challenging the use of the System or validity of its results and/or use of the U.S. Mails to deliver the Citation.

5.4 Subject to Section 1.5.3 of Exhibit A, the Municipality shall provide all electrical power required by the System and access at the respective intersections. In the event that City determines that sufficient electrical power capacity is not available, Nestor shall pay for the upgrading of the existing electrical service. If City determines that existing electrical service is not upgradeable, Nestor shall pay for installation of an additional service pedestal at the respective intersection. The Municipality shall be responsible for ongoing electrical usage charges associated with the service.

5.5 Except as otherwise required by law, during the term of this Agreement, the Municipality shall not modify the yellow or all red phases of a traffic signal without advising Nestor in advance of such modification; provided, however, that in the event of an emergency, the municipality may make such modifications, provided it provides notice to Nestor within forty-eight (48) hours after any such modification. In the event any such modification materially adversely affects any Installed Approach(es) and upon written notice from Nestor, either: (i) the Municipality may elect to relocate the affected Installed Approaches in accordance with Exhibit A, Section 1.2, or if such election is not made within sixty (60) days after Municipality receives written notice from Nestor, (ii) Nestor may terminate this Agreement with respect to such Installed Approach(es), provided the adverse effect is related to the functional operation of the Installed Approach, and the Municipality shall pay to Nestor on demand the termination and cancellation fee set forth in Section 4.3(i) pro rated by the ratio of the number of such terminated Installed Approach(es) to the total of all Installed Approaches. Notwithstanding the above, should relocation of an Installed Approach be mandated by State law, Municipality shall pay to Nestor the termination and cancellation fee set forth in Section 4.3(ii) pro rated by the ratio of the number of such terminated Installed Approach(es) to the total of all Installed Approaches.

5.6 The Municipality shall provide such assistance as may be required for Nestor to obtain any information from the Court(s) or other governmental instrumentalities necessary or desirable for Nestor to track payments on the Municipality's behalf, to provide for proper invoicing and reporting for the Municipality and to otherwise provide the Services.

5.7 During the Term of this Agreement, except as expressly permitted by this Agreement, the Municipality shall not use the System, or allow the System's use by a third party, without the prior written permission of Nestor.

6. LIMITED WARRANTY AND LIMITATION ON DAMAGES

6.1 Notwithstanding Section 6.2, Nestor warrants that the System's functionality will conform in all material respects to the description of the System set forth on Exhibit A. This warranty does not apply if the Municipality has failed to make all payments to Nestor required by this Agreement or as set forth in, and is subject to the conditions of Section 6.3.

6.2 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICES AND SYSTEM ARE NOT ERROR-FREE AND ARE BEING PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND AND NESTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. MUNICIPALITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO MUNICIPALITY BY OR ON BEHALF OF NESTOR OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

6.3 REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL NESTOR BE LIABLE TO THE MUNICIPALITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING ANY DAMAGES FOR LOSS OF INFORMATION, PROFITS, OR SAVINGS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE SYSTEM, THE SERVICES OR THE USE OF OR INABILITY TO USE THE SYSTEM OR THE SERVICES, EVEN IF NESTOR OR AN AUTHORIZED NESTOR REPRESENTATIVE IS AWARE, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NESTOR BE LIABLE TO MUNICIPALITY FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID BY MUNICIPALITY TO NESTOR IN ACCORDANCE WITH SECTIONS 4.1 OR 4.2 FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT(S) OR CIRCUMSTANCE(S) GIVING RISE TO NESTOR'S LIABILITY TO MUNICIPALITY. THIS PROVISION DOES NOT APPLY TO NESTOR OR MUNICIPALITY LIABILITY TO THIRD PERSONS.

6.4 The Municipality acknowledges and agrees that:

- (i) The System may not detect every red light violation;
- (ii) Since the System may flag as a violation conduct which is in fact not a violation, the output of the System will require review, analysis and approval by personnel appropriately qualified by the Municipality under applicable law prior to the issuance of any Citation;
- (iii) The System generates a preempt signal when a violation is predicted which may be used, at the option of the Municipality, to extend the all-red phase, and may not detect every event for which it is desirable to recommend extension of the red light phase;
- (iv) The System relies on the proper functioning of Municipality supplied equipment for signal light changes;
- (v) The warranty set forth in section 6.1 is not intended to, and shall not, be construed as a warranty of the level of performance of the System; and
- (vi) The proper functioning of the System requires the Municipality's full and complete compliance with Nestor instructions, which it hereby agrees to do.

7. INDEMNITY

7.1 Nestor agrees to indemnify, defend, and hold harmless the Municipality and Municipality's employees, officials, agents, representatives and members from any claim of damages (including the payment of reasonable attorneys' fees) by a third party, to the extent that such claims arise from (a) a finding that the System infringes any validly issued United States patent (b) Nestor's or Nestor's agent's, employee's, or subcontractor's negligence in the performance of this Agreement, or (c) Nestor's or Nestor's agent's, employee's, or subcontractor's intentional act in the performance of this Agreement. If, as a final result of any litigation, the Municipality is found liable to a third party as a result of a third party claim of damages based upon an injury that occurred through the use of the System in the manner and for the purposes for which the System was designed and marketed, Nestor shall contribute 50% of the defense costs (including but not limited to attorneys fees, court costs and expert witness fees) and shall contribute 50% of the resulting damage award or, if settled, the resulting settlement. If, as a final result of any litigation, the use of the System by Municipality is prevented, in whole or in part, by an injunction, Nestor's sole obligation to the Municipality as a result of such injunction shall be, at Nestor's option, either to (i) replace such part as has been enjoined, or (ii) procure a license for Nestor or the Municipality to use same, or (iii) remove same at no additional cost to the Municipality and terminate this Agreement.

7.2 Anything to the contrary notwithstanding except for Section 7.4, Nestor assumes no obligation or liability for, and the Municipality will indemnify, defend, and hold harmless Nestor, its officers, directors, shareholders, agents, and employees from any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) Nestor's compliance with any designs, specifications, or instructions of the Municipality, (ii) any modification of the System made by the Municipality, (iii) the negligence or intentional act of Municipality, (iv) failure of the Municipality to use the System in the manner described by Nestor, (v) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the Municipality (other than that supplied by Nestor or any of its contractor, subcontractors or agents), (vi) the review and analysis of the System data output by Municipality personnel for citation preparation, (vii) the Municipality's use and/or administration of the System except to the extent that the third party claim for damages alleges a defect in the design of the system, and the design element is one over which Municipality had no control, and (viii) an allegation regarding the permissibility under the law of the use of the System except to the extent the third party claim of damages is based upon an injury that occurred through the use of the System in the manner and for the purposes for which the System was designed and marketed.

7.3 The rights of a Party seeking indemnification under this Section 7 shall be conditioned upon (i) the indemnified Party notifying the indemnifying Party promptly upon receipt of the claim or action for which indemnification is sought (but the failure to do so shall not relieve the indemnifying Party of its obligations under this Section 7 unless and then only to the extent it is materially prejudiced thereby) and (ii) the indemnified Party's full cooperation with the indemnifying Party in the settlement or defense of such claim or action at no cost to the indemnifying Party (except for reasonable out-of-pocket traveling expenses). Such cooperation shall include, but not be limited to, the Municipality providing access for, and permission to, Nestor for the purpose of the replacement of such part or parts of System as Nestor may deem necessary or desirable. An indemnified Party may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that the indemnifying Party shall remain in, and responsible for, control of the matter. This Section 7 states the entire liability and obligation and the exclusive remedy of the Parties with respect to any actions or claims (i) of alleged infringement relating to or arising out of the subject matter of this Agreement or (ii) otherwise the subject of this paragraph.

7.4 In the event that an allegation(s) in a claim of damages as referenced in Section 7.2 (viii) above is made, the costs of the defense of that allegation and the cost of the resulting damage award or, if settled, the resulting settlement will be equally split between the City and Nestor. The party named in the complaint will have control over the defense but will take no action to plead a defense theory, or settle the case without approval of the other party, which approval will not be unreasonably withheld. If both parties are named in the complaint, City will have control over the defense. Pleadings, briefs, and memorandum of authorities that are required to be filed shall be provided to the other party within 48 hours of the filing deadline, or as soon thereafter as practical. If the other party wants to have its own counsel, it may hire independent council at its own cost. No settlement of any such allegation will be made or accepted without the other party's approval. For the purposes of this section 7.4, "control over the defense" shall mean the power to select and hire counsel, and the power to control over the day to day management prosecution of the case.

8. INSURANCE

8.1 Nestor represents that it and its employees are protected against the risk of loss by the following insurance coverage:

(i) Comprehensive general liability insurance with a combined single limit of Three Million Dollars (\$3,000,000.00) per occurrence;

(ii) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Nestor with a minimum Three Million Dollars (\$3,000,000.00) per

occurrence combined single limit bodily injury and property damage.

Each such insurance policy shall name the municipality and its officers, officials, members, employees, agents and representatives (collectively, "Municipality and Municipality Personnel") as an additional insured. In addition, all such insurance:

- (i) shall be primary insurance and not contributory with any other insurance Municipality and Municipality Personnel, or any of them, may have;
- (ii) shall contain no special limitations on the scope of protection afforded to Municipality and Municipality Personnel;
- (iii) shall be "date of occurrence" and not "claims made" insurance;
- (iv) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Insurer's liability;
- (v) shall provide that the policy (a) shall not be cancelled by the insurer or Nestor unless there is a minimum of ten (10) days prior written notice to Municipality, and (b) shall not be non-renewed by the insurer or Nestor unless there is a minimum of fifteen (15) days prior written notice to Municipality; and
- (vi) shall be written by a California admitted insurer with a Best rating of not less than B+, Class X; and

None of the above described policies shall require Nestor to meet a deductible or self-insured retention amount of more than Ten Thousand Dollars (\$10,000.00) unless approved in writing by the City Manager of the Municipality in his/her sole and absolute discretion.

8.2 Nestor also represents that it and its employees are protected against the risk of loss by Workers' Compensation insurance as required by the State of California Labor Code. Such insurance shall:

- (i) be endorsed to include a waiver of subrogation rights against Municipality and Municipality Personnel, and
- (ii) shall provide for notice of cancellation as described in subparagraph 8.1(v) above. Such policies shall be written by a California licensed insurer with a Best rating of not less than B+, Class X.

9. MISCELLANEOUS

9.1 Except as specifically provided in this Agreement, this Agreement may not be assigned, nor may performance be delegated, by either Party without the express written consent of the other Party, except that Nestor may assign or otherwise encumber this Agreement (a) for the purpose of financing the costs of the System contemplated to be implemented hereby, ~~(b) to any entity owned or controlled by Nestor or~~ (c) to any third party that acquires all or substantially all of Nestor's business relating to the System.

9.2 The headings and captions used in this Agreement and the Exhibits are for convenience only and are not to be used in the interpretation of this Agreement.

9.3 The failure of either Party to require performance of any provision of this Agreement shall not affect the right to subsequently require the performance of such provision or any other provision of this Agreement. The waiver of either Party of a breach of any provision shall not be taken or held to be a waiver of any subsequent breach of that provision or any subsequent breach of any other provision of this Agreement.

9.4 If any covenant or provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable, all remaining covenants and provisions of this Agreement shall nevertheless remain in full force and effect, and no covenant or provision of this Agreement shall be deemed to be dependent upon any covenant or provision so determined to be invalid, illegal or unenforceable unless otherwise expressly provided for herein.

9.5 This Agreement has been entered into, delivered and is to be governed by, construed, interpreted and enforced in accordance with the laws of the State in which the Municipality is located (without giving reference to choice-of-law provisions) from time to time in effect.

9.6 Except as set forth in this Agreement and the Exhibits hereto, no representation, statement, understanding or agreement, whether written or oral, has been made and there has been no reliance on anything done, said or any assumption in law or fact with respect to this Agreement for the duration, termination or renewal of this Agreement other than as expressly set forth in this Agreement and there has been no reliance upon anything so done or said that in any way tends to change or modify the terms or subject matter of this Agreement or to prevent this Agreement from becoming effective. This Agreement supersedes any agreements and understandings, whether written or oral, entered into by the Parties hereto prior to the Effective Date of this Agreement.

9.7 This Agreement may be modified or amended from time to time by the Parties, provided, however, that no modification or amendment hereto shall be effective unless it is stated in writing, specifically refers to this Agreement and is executed on behalf of both Parties hereto.

9.8 Except as otherwise specified, all notices, payments and reports hereunder shall be deemed given and in effect as of the date of mailing or transmission, as the case may be, when sent by next day delivery or courier service, postage pre-paid, or three (3) days after the date of mailing when sent by first class mail, postage pre-paid, addressed in all such cases to the Parties as set forth in the preamble to this Agreement directed in each case to the President of Nestor or the Chief of Police at the Municipality or to such other addresses as the Parties may from time to time give written notice of as herein provided.

9.9 Except for the obligation to make any payment of money, neither Party shall be liable to the other for failure or delay in meeting any obligations hereunder which arises in whole or in part from causes which are unforeseen by, or beyond the control of, such Party, including without limitation, acts of God or of a public enemy, acts of the Government (other than the Municipality in the case of the Municipality) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts or omissions of subcontractors and other third-parties and unusually severe weather. When any such circumstance(s) exist, Nestor shall have the right, in its sole discretion, to allocate its available production, deliveries, services, supplies and other resources among any and all buyers (whether or not including the Municipality), as well as among departments and affiliates of Nestor, without any liability to the Municipality.

9.10 Any dispute, controversy or claim arising out of or relating to this Agreement or a breach thereof or the use of the System, must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county.

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IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

"Nestor"

Nestor Traffic Systems, Inc.

By: 

Name: David Fox

Title: President and Chief Executive Officer

By: 

Name: Nigel P. Hebborn

Title: Chief Financial Officer

"Municipality"

City of Costa-Mesa, California

By: 

Name: Linda Dixon

Title: Mayor

Exhibit A

SERVICES

Nestor shall provide the Municipality with the following Services, each of which is more fully described below:

1. Site Installation Planning; Design and Equipment Installation
2. User Training and Support
3. Violation Processing Services
4. Maintenance, Self-test and Support
5. Public Education Campaign
6. Expert Witness Testimony and Court Training
7. Violation Review Station
8. Reporting
9. Meetings

1. Site Installation Planning, Design and Equipment Installation. Nestor will conduct a twenty-four (24) hour video recording, to determine the number of violations at proposed intersections for an evaluation fee of Three Thousand Five Hundred Dollars (\$3,500.00) per intersection, due upon initial order of service. If the evaluated intersection is selected by the Municipality for a System installation, the evaluation fee shall be credited against initial citation fees due from that intersection. Nestor will also waive the evaluation fee of Three Thousand Five Hundred Dollars (\$3,500.00) for the first intersection that is not selected for a full System installation.

1.1 The System. The Systems shall be comprised of equipment capable of monitoring a minimum of two traffic approaches on a twenty-four (24) hour seven (7) day a week basis at a maximum of twenty(20) approaches enforced at a maximum of ten(10) intersections, to be selected by Municipality, in Municipality's sole and absolute discretion, within ninety (90) days after execution of this Agreement; provided, however, that in the event Nestor reasonably believes, in Nestor's professional and reasonable judgment, that installing the System at a particular intersection or approach would not be commercially practicable, due to installation difficulties or functionality issues, Nestor may notify Municipality, and Municipality shall select another intersection or approach.

The system also includes a Collision Avoidance feature that generates a preempt signal when a violation is predicted which may be used, at the option of the Municipality, to extend the all-red phase. Municipality shall have the sole authority to determine the duration of any such extensions to the all-red phase. The system may not detect every event for which it is desirable to recommend extension of the red light phase.

1.2 Substitution or Addition of Intersection. After the commencement of design and installation activities, the Municipality may require Nestor to relocate any existing and operating System for an individual intersection to an alternate location in the event that the number of Citations issued at the intersection is less than sixty (60) Citations per Installed Approach at that intersection per month, averaged over a three (3) month or longer period; provided, however, that in the event Nestor reasonably believes, in Nestor's professional and reasonable judgment, that installing the System at a particular intersection or approach would not be commercially practicable, due to installation difficulties or functionality issues, Nestor may notify Municipality, and Municipality shall select another intersection or approach. The relocation fee to be paid by the Municipality is subject to determination by Nestor based, in part, on the alternate intersection agreed to, but in any event will not exceed Eight Thousand Dollars (\$8,000) removal of poles and intersection restoration, Ten Thousand Dollars (\$10,000) for engineering and design, plus Forty Thousand Dollars (\$40,000) for construction plus an additional 10% of that Forty Thousand Dollars (\$40,000) for project management per Dual Approach System if existing conduit is available at the new intersection, or the previously noted fee, plus an additional Twenty Thousand Dollars (\$20,000) for conduit if new conduit is required. The Municipality also

has the option at the time of order to pay actual documented costs incurred by Nestor to relocate the System plus a ten percent (10%) management fee. At Nestor's option, if requested the Municipality could reimburse Nestor through a temporary per Citation fee surcharge to be agreed upon by the Municipality and Nestor for all Citations issued by the System that receive a Final Disposition pursuant to section 4.1.

1.3 Timeframe for Installation of the System. The System will be installed and activated within the above intersections in three separate phases ("Phase 1," "Phase 2," and "Phase 3").

(i) Phase 1 shall consist of Nestor's installation and activation of the System within the first eight approaches.

(ii) Within ninety (90) days after Nestor has completed the installation and activation required in Phase 1, the Municipality shall inform Nestor of its election to either (a) proceed with the installation and activation required in Phase 2 or (b) opt out of Phase 2 and Phase 3.

(iii) Phase 2 shall consist of Nestor's installation and activation of the System within the next six approaches.

(iv) In the event Municipality has elected to proceed with Phase 2, the Municipality shall, within ninety (90) days after Nestor has completed the installation and activation required in Phase 2, inform Nestor of its election to either (a) proceed with the installation and activation required in Phase 3 or (b) opt out of Phase 3.

(v) Phase 3 shall consist of Nestor's installation and activation of the System within the next six approaches.

In the event the Municipality elects to opt out of Phase 2 and/or Phase 3, the Municipality shall not be required to pay Nestor any additional fee or charge, and any calculations made pursuant to this Agreement, such as the termination and cancellation fee formula set forth in Section 4.3, shall only take into consideration those intersections into which an Installed Approach has been installed and activated.

Nestor will use reasonable commercial efforts to install the Systems in accordance with the schedule to be set forth in the Implementation Plan attached hereto and incorporated herein as Exhibit D. Within ten (10) days after the Municipality elects to proceed with Phase 2 or Phase 3, as applicable, the parties shall prepare a mutually agreeable implementation plan for such phase that contains substantially similar time frames for similarly configured intersections as those set forth in the Implementation Plan for Phase 1. The Municipality agrees that the dates of installation and activation of the Systems set forth in this Section 1.3 are subject to conditions beyond the control of Nestor and are not guaranteed.

1.4 Installation/Ownership of the System. Nestor will procure, install and provide support of traffic signal violation detection equipment (computer hardware, software, cameras, camera housing and mounts, communications equipment and roadside controller cabinets) as specified in the Proposal at each of the designated intersections provided for above. As between Nestor and the Municipality, all components for the System will remain the property of Nestor.

1.5 Installation

1.5.1 Nestor shall submit plans and specifications to the Municipality for review and approval, which review and approval will not be unreasonably withheld, delayed or conditioned. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to practice in the State in which the Municipality is located. Nestor shall provide Municipality with at least three sets of drawings of the wiring for the System circuitry and shall also transmit said drawings to Municipality in

AutoCAD format.

1.5.2 If commercially reasonable and if "Capacity" (as that term is defined below) exists, all wiring shall be internal to equipment (not exposed) and underground in existing traffic signal conduits, except where required to directly interface with the traffic signals and electrical service. The term "Capacity" shall mean that the fill-to-volume ratio, after installation by Nestor, will not exceed sixty-seven percent (67%). Separate conduits shall be used by Nestor if installation by Nestor shall cause existing conduit(s) to exceed Capacity. If existing conduits are used, the Municipality will not unreasonably withhold, delay or condition consent to such use.

1.5.3 Nestor shall install and maintain the System such that it shall be electrically isolated from the traffic signal system. Prior to installation of the System, all installation plans shall be submitted to Municipality for Municipality's prior review and approval.

1.5.4 The System may be mounted on existing traffic signal poles where possible, subject to Municipality review and approval, such review and approval not to be unreasonably withheld, delayed or conditioned.

1.5.5 The System poles and foundations shall conform to current Caltrans standards. The Municipality shall be solely responsible for remediation that may be required with respect to such poles and foundations if such remediation is required due to conditions caused by Municipality. The above notwithstanding, Nestor shall be responsible for all costs associated with upgrading/replacing all poles and foundations which meet Caltrans' requirements but are unable to accommodate Nestor's equipment.

1.5.6 Nestor shall notify the Municipality at least forty-eight (48) hours prior to interfacing with traffic signal equipment. Nestor shall be responsible for pulling all its wiring into Municipality cabinets.

1.5.7 To the maximum extent permitted by law, the Municipality shall waive any permit or licensing fees for any construction and installation being done.

1.6 Production of Video Files. Nestor shall produce digital video files of red light violations occurring during both day and night conditions, capable of identifying vehicles traveling through the intersection during the red light phase. The violation video shall capture the driver's view of the traffic signal, the driver of the vehicle and either a front or rear view of the vehicle license plate. The digital video will be encrypted at the roadside location prior to being electronically transferred to the processing center.

1.7 Restoration of Intersections. Upon termination or expiration of the Agreement or use of a System at an intersection, Nestor will remove the System and all abandoned underground wiring, and restore the affected public facilities, including returning the intersections to their original condition; provided, however, that Nestor shall not be required to remove any conduit, pole boxes, or underground wiring. All foundations installed by Nestor are to be renovated or removed in accordance with Caltrans Standard Specifications, Section 86. All costs incurred by Nestor thereby will be the responsibility of Nestor.

2. User Training and Support.

2.1 Training of Municipality Personnel. Within seventy-two (72) hours after the System has been installed in the first intersection, Nestor will provide up to eight (8) hours of training for up to fifteen (15) persons at one (1) session at the Municipality's facilities to acquaint Municipality personnel with System operation. Training shall consist of instructional and operational training as well as hands-on equipment exercises with an instructor. All necessary training materials and documentation will be provided by Nestor. If required, the Municipality may request one additional eight (8) hour training session at no additional charge. If the Municipality requests additional courses or training, Nestor will provide these on a fully cost reimbursable

basis.

3. Violation Processing Services

3.1 Violation Processing Services. Nestor shall perform a quality control check on all violations recorded by the System, using criteria previously provided to Nestor by the Municipality. To the extent Nestor is able, Nestor shall access directly the drivers license information, for purposes of verifying information such as an alleged violator's gender, age, height, and/or weight, and the registered owner residence address from the State department that regulates the use and operation of motor vehicles (the "DMV"). In the event a violation passes Nestor's quality control check, said violation is electronically transmitted to the Municipality, in a draft citation format (a "Transmitted Violation"). Upon receipt by the Municipality, an authorized representative of the Municipality shall review each Transmitted Violation, applying the Municipality's quality control criteria to said Transmitted Violation, and determining whether a citation (a "Citation") shall be issued to the alleged violator. In the event the authorized representative of the Municipality determines that a Citation shall be issued for a Transmitted Violation, the representative shall electronically transmit its authorization and signature (its "Approval") to Nestor for that Transmitted Violation.

3.1.1 Preparation and Mailing of Citations. Upon Nestor's receipt of an Approval for a Transmitted Violation, Nestor shall print and mail, at Nestor's sole cost and expense, a Citation to the violator as soon as is reasonably practicable after said Citation has been transmitted to the processing center (managed by Nestor or such third party, to whom Nestor has delegated such operation, on behalf of the Municipality). To the extent required by applicable law, Nestor will obtain a certification of mailing issued by the Post Office. The form of Citation shall be subject to the approvals of the Municipality and the Judicial Council for the State of California. Said approvals by the Municipality may not be unreasonably delayed, conditioned or withheld.

3.1.2 Cooperation With Police and Court. Nestor shall cooperate with the Municipality's Police Department and the Court in the issuance of Citations. In addition, Nestor will cooperate with the Court to set up the necessary communications and procedures that will enable Nestor to send delinquent notices to those registered owners/drivers for whom such notices are appropriate.

3.2 Access to Drivers License Information. To the extent Nestor is able, Nestor shall access directly the drivers license information and the registered owner residence address from the State department that regulates the use and operation of motor vehicles (the "DMV"). If Nestor is unable to access such information, Nestor shall provide the license plate number of alleged violators to the Municipality, which will provide such information to Nestor within a reasonable period of time.

3.3 Numbering System. Nestor, in coordination with the Court and the Police Department, will develop and implement an independent numbering system for automated red light Citations.

3.4 Transmission of Information. Nestor will download all Citation information via an electronic file into the Court database. Nestor shall maintain a documented chain of custody for all electronically transmitted information.

3.5 Customer Service. At no additional charge to Municipality, Nestor will provide an automated customer service telephone number to the public. Customer Service Representatives will be available Monday through Friday, from 8:30 a.m. to 5:00 p.m. local time (at the Municipality), excluding holidays, in order to schedule violation video viewing appointments for the Police Department and answer basic questions regarding the Municipality's program.

4. (Intentionally Omitted)

5. Maintenance and Self-test

5.1 Maintenance of System. Except as provided herein, Nestor shall use commercially reasonable efforts to "Maintain the System" (as defined below); provided however, that Nestor shall not be responsible for any maintenance, repair or replacement required as a result of (i) the negligence or intentional act of the Municipality, its employees, agents or independent contractors (other than Nestor) and/or (ii) any equipment or software not provided by Nestor. Nestor shall maintain a maintenance log that documents all service issues. To "Maintain the System" shall mean to keep the System in such a state of operation such that the System's functionality conforms in all material respects to the description of the System set forth in this Exhibit.

5.2 Equipment Checks. Nestor shall use commercially reasonable efforts to perform remote camera and PC equipment checks on a daily basis to confirm proper operation of computers, cameras and communications network. Routine in-field camera equipment inspection will be done as needed.

6. Public Education Campaign

6.1 Public Awareness Program. Nestor shall assist the Municipality with a Public Awareness Program. Such assistance shall consist of:

- (i) Reasonable assistance for a media event to launch the community education program
- (ii) A reasonable amount of training for a Municipality staffed speaker's bureau
- (iii) The production of warning signs (as described in section 5.2) for installation by Municipality
- (iv) Preparation and issuance of warning notices mailed to violators for the first thirty (30) days of the program
- (v) A toll-free customer service hotline as described in section 3.5

6.2 Warning Signs. Nestor shall provide one (1) warning sign per Installed Approach with all wording approved by the Municipality. The signs shall be in compliance with applicable law. The Municipality will be responsible for installation and Nestor will assist in recommending appropriate installation locations.

7. Expert Witness Testimony and Court Training

7.1 Expert Witness Testimony. Nestor will provide expert witness testimony, as reasonably necessary, to testify regarding the accuracy and technical operation of the System. For any such testimony required greater than eight (8) hours per month, the Municipality shall pay Nestor a fee for the time incurred above such eight (8) hours in a month (including time spent for preparation, travel and attendance in Court) of such expert witness based upon Nestor's then current hourly rate for such services (currently \$175/hour), plus all reasonable out-of-pocket expenses.

7.2 Court Training. Nestor will conduct a one (1) day workshop-orientation session for Court judges (and/or their designees), other appropriate Court officials and the Municipality prosecutor.

8. Violation Review Station

8.1 Provision of Equipment. Nestor will provide one (1) laptop workstation and one (1) printer (each of which shall remain the property of Nestor) for Transmitted Violation review, violation video viewing appointments, and court hearings.

9. Reporting

9.1 Weekly Report. Nestor shall provide a weekly report to the Municipality's Police Department and the Court during the Warning Period. The report shall include the number of violations recorded.

9.2 Monthly Report. Nestor shall submit to the Municipality a Monthly Report on project results within thirty (30) days after the end of each calendar month during the Term of the Agreement. To the extent reasonably commercially practical, the Monthly Report shall include information for each violation recorded by the System as well as the following items:

- (i) Number of violations recorded
- (ii) Number of violations for which Citations were not issued
- (iii) Breakdown of reasons for non-issuance
- (iv) Number of Citations issued
- (v) Court hearings scheduled and held
- (vi) Number of calls for information
- (vii) Number of violation video viewing appointments scheduled

9.3 Additional Reports or Information. Any other reports and information are not part of the Agreement and the preparation and delivery of any other such reports or information may result in additional fees.

9.4 Database. Nestor shall maintain a database with the following information (if available to Nestor) per violation:

- (i) Location, date and time
- (ii) Number of seconds of red traffic signal
- (iii) Type of violation
- (iv) Vehicle description including license plate state and number
- (v) Applicable vehicle code section violated
- (vi) Number of Transmitted Violations or reason for not transmitting
- (vii) Registered vehicle owner's name and address, driver's license number and related information required to prepare Citations where violation is made by driver other than registered owner (Affidavit of Non-Liability)
- (viii) Status of Citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.)

10. Meetings

Nestor representative(s) shall be made reasonably available to meet with the Police Department, and other representatives of the Municipality as determined by the Municipality, on a weekly basis during program implementation and on a monthly basis once the program is fully operational; provided, however, that in the event of an emergency, such as, for example, the Municipality's determination that continued operation of the System poses a danger to the citizens of the Municipality, Nestor representative shall make themselves available to meet with representatives of the Municipality within twenty-four (24) hours after receiving written notice from Municipality.

Exhibit B

LICENSE AGREEMENT FOR CROSSING GUARD SOFTWARE

This License Agreement (the "License") is a legal agreement between you (the contracting counterparty in an agreement (the "Agreement") to which a copy of this License is attached as an Exhibit) and Nestor Traffic Systems, Inc. ("Nestor") for the Nestor software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (the "SOFTWARE PRODUCT"). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to you by Nestor. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to you under the terms of that license agreement. By execution of the Agreement, you have agreed to be bound by the terms of this License. Such agreement by you is an express condition to your ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants you only the following rights: For each copy of the Software Product provided by Nestor as needed pursuant to the Agreement, You may install and use such copy of the SOFTWARE PRODUCT on a single computer, including a workstation, terminal or other digital electronic device ("COMPUTER"). You may also store or install a copy of the SOFTWARE PRODUCT on a storage device, such as a network server, used only to install or run the SOFTWARE PRODUCT on your other COMPUTERS over an internal network; however, you must acquire and dedicate a license for each separate COMPUTER on or from which the SOFTWARE PRODUCT is installed, used, accessed, displayed or run. A license for a copy of the SOFTWARE PRODUCT may not be shared or used concurrently on different COMPUTERS.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer. You may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant you any rights in connection with any trademarks or service marks of Nestor. Without prejudice to any other rights, Nestor may terminate this License if you fail to comply with the terms and conditions of this License. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. SUPPORT SERVICES AND UPGRADES. Nestor may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by the Agreement. Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information you provide to Nestor as part of the Support Services, Nestor may use such information for its business purposes, including for product support and development. Nestor will not utilize such technical information in a form that personally identifies you. If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Nestor as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this License. If the SOFTWARE PRODUCT is an upgrade of a component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT. All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by Nestor or its suppliers. All title and intellectual property rights in and to

the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This License grants you no rights to use such content. All rights not expressly granted are reserved by Nestor.

5. DUAL-MEDIA SOFTWARE. You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for your single computer. You may not use or install the other medium on another computer. You may not loan, rent, lease, lend or otherwise transfer the other medium to another user.

6. BACKUP COPY. After installation of one copy of the SOFTWARE PRODUCT pursuant to this License, you may keep the original media on which the SOFTWARE PRODUCT was provided by Nestor solely for backup or archival purposes. If the original media is required to use the SOFTWARE PRODUCT on the COMPUTER, you may make one copy of the SOFTWARE PRODUCT solely for backup or archival purposes. Except as expressly provided in this License, you may not otherwise make copies of the SOFTWARE PRODUCT or the printed materials accompanying the SOFTWARE PRODUCT.

7. U.S. GOVERNMENT RESTRICTED RIGHTS. If you are acquiring the SOFTWARE PRODUCT (including the related documentation) on behalf of any part of the United States Government, the following provisions apply. The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. The SOFTWARE PRODUCT is deemed to be "commercial software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the SOFTWARE PRODUCT (including the related documentation) by the U.S. Government or any of its agencies shall be governed solely by the terms of this License and shall be prohibited except to the extent expressly permitted by the terms of this License. Manufacturer is Nestor; its address is set forth in the Agreement.

8. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. You represent and agree that you do not intend to and will not use, disseminate or transfer in any way the SOFTWARE PRODUCT in violation of any applicable law, rule or regulation of the United States, or any State of the United States or any foreign country of applicable jurisdiction. Without limiting the foregoing, you agree that you will not export or re-export the SOFTWARE PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. You specifically agree not to export or re-export the SOFTWARE PRODUCT: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any end-user who you know or have reason to know will utilize the SOFTWARE PRODUCT or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

9. OTHER PROVISIONS. Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.

Exhibit C

LEASE AGREEMENT FOR CROSSING GUARD SYSTEM

This Lease Agreement (the "Lease") is part of an agreement (the "Agreement") (to which a copy of this Lease is attached as an Exhibit) between the Municipality and Nestor. The Parties hereto agree as follows:

1. LEASE. Nestor hereby leases to Municipality and Municipality hereby leases from Nestor, subject to the terms and conditions of this Lease, such items of System equipment (together with all attachments, replacements, parts, additions, substitutions, repairs, accessions and accessories incorporated therein and/or affixed thereto, the "Equipment") that Municipality obtains possession, custody or control pursuant to the Agreement.

2. USE AND LOCATION. The Equipment shall be used and operated by Municipality only in connection with the operation of the System by qualified employees of Municipality and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. Municipality shall not part with control or possession of the Equipment without Nestor's prior written consent.

3. CONDITION. Municipality shall keep the Equipment in good condition and working order, ordinary wear and tear from proper use excepted. Municipality shall not make any alterations, additions or improvements to the Equipment without Nestor's prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of the Equipment and are readily removable without causing material damage to such Equipment so as to return the Equipment to its original state, less ordinary wear and tear. Any alteration, addition or improvement not removed prior to the return of the Equipment shall without further action become the property of Nestor, provided, however, that any alterations, additions and improvements which would reduce the value of the Equipment must be removed prior to the return of such Equipment.

4. RETURN. Upon the expiration or earlier termination of the Agreement, Municipality shall return the Equipment in the same condition as when delivered to Municipality, ordinary wear and tear excepted, to Nestor at the location specified by Nestor.

5. OWNERSHIP, LIENS. The Equipment is and shall at all times be the property of Nestor. Municipality agrees to take all action necessary or reasonably requested by Nestor to ensure that the Equipment shall be and remain personal property. Nothing in this Lease, the Agreement or any Exhibit shall be construed as conveying to Municipality any interest in the Equipment other than its interest as a Municipality. If at any time during the term hereof, Nestor supplies Municipality with labels, plates or other markings evidencing ownership, security or other interest therein, Municipality shall affix and keep the same displayed on the Equipment. Municipality shall, at its expense, keep the Equipment free and clear of all liens, charges, claims and other encumbrances.

6. INSURANCE. Municipality shall, at all times prior to the return of the Equipment to Nestor in accordance with Section 4 hereof, carry and maintain, at its expense, physical damage insurance providing "all risks" coverage for the Equipment and public liability and property damage insurance in amounts and with insurance companies satisfactory to Nestor, but in no event shall the all risk insurance be for an amount less than the replacement cost of the Equipment. [Such insurance shall (a) name Nestor as loss payee for the all risk insurance and as additional insured for liability insurance, and (b) provide 30 days' prior written notice to Nestor before coverage lapses or is cancelled or materially changed.] Within fifteen (15) days after the Effective Date, Municipality shall provide evidence of said insurance to Nestor. Said insurance shall be deemed satisfactory to Nestor unless Nestor notifies Municipality of its disapproval thereof, within fifteen (15) days after Nestor's receipt of Municipality's evidence of insurance.

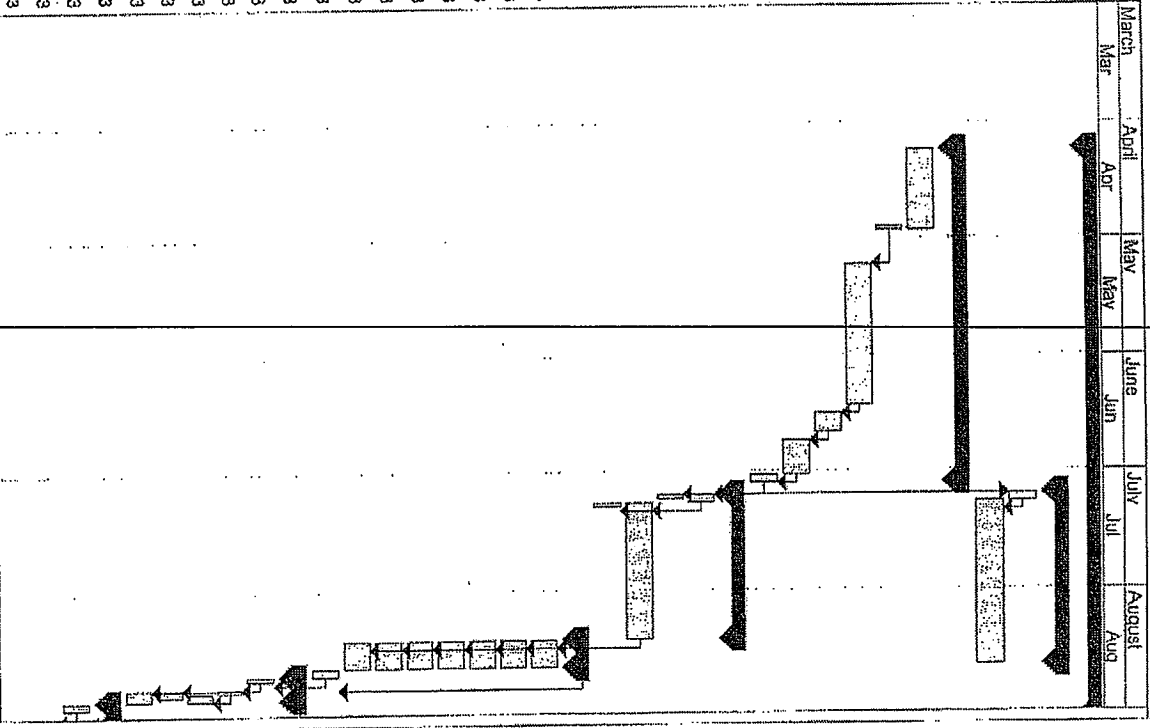
7. NO MUNICIPALITY SUBLEASE; ASSIGNMENT. MUNICIPALITY SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OR OTHERWISE RELINQUISH POSSESSION OR CONTROL OF ALL OR PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY SUB-LEASE OF ALL OR ANY PART OF THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF NESTOR.

8. FINANCING STATEMENTS; FURTHER ASSURANCES. Nestor and Municipality intend this transaction to be a leasing transaction only, but to the extent, at any time or from time to time, this Lease is construed to be a transaction intended as security, Nestor retains and Municipality hereby grants a security interest in all the Equipment, the proceeds of any sale, assignment, lease or sublease thereof, any insurance proceeds, and any other rights of Municipality in and to the Equipment, this Lease and/or their proceeds. Municipality, at the request of Nestor and at Municipality's expense, agrees to execute and deliver to Nestor any financing statements, fixture filings or other instruments necessary for perfecting the interests and title of Nestor in the Equipment, and Municipality agrees that Nestor may, in Nestor's sole discretion, file a copy of the Agreement, this Lease and any Exhibits in lieu of a financing statement. Municipality agrees, at Nestor's expense, to promptly execute and deliver such further documents and take any and all other action reasonably requested by Nestor from time to time, for the purpose of fully effectuating the intent and purposes of this Lease, and to protect the interests of Nestor, its successors and permitted assignees.

9. OTHER PROVISIONS. Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.

Costa Mesa Red Light Camera Implementation Schedule - Phase 2

ID	Task Name	Duration	Start	Finish	March	April	May	June	July	August
1	Overall Project Schedule (Bristol & Anton - N, S, WS)	103 days	Tue 4/8/03	Tue 9/2/03						
2	Communications & Equipment	32 days	Mon 7/7/03	Tue 8/19/03						
3	Confirm communications infrastructure / set-up	2 days	Mon 7/7/03	Tue 7/8/03						
4	Order communications (intersection)	30 days	Wed 7/9/03	Tue 8/19/03						
5	Plan Design & Review	62 days	Tue 4/8/03	Thu 7/3/03						
6	Submit plans for City review	15 days	Tue 4/8/03	Mon 4/28/03						
7	Intersection Walkthrough w/ City	1 day	Mon 4/28/03	Mon 4/28/03						
8	Plan Updates/City Comments	26 days	Thu 5/8/03	Fri 6/13/03						
9	Plans Approved by City	5 days	Mon 6/16/03	Fri 6/20/03						
10	Subcontractor selected	7 days	Mon 6/23/03	Tue 7/1/03						
11	Permits issued to subcontractor	2 days	Wed 7/2/03	Thu 7/3/03						
12	Installation	27 days	Mon 7/7/03	Tue 8/12/03						
13	Pre-Construction/Underground survey	2 days	Mon 7/7/03	Tue 7/8/03						
14	Equipment delivery to subcontractor	1 day	Mon 7/7/03	Mon 7/7/03						
15	Site Construction	25 days	Wed 7/9/03	Tue 8/12/03						
16	Includes electrical & communications installation	1 day	Wed 7/9/03	Wed 7/9/03						
17	Initial intersection set-up	5 days	Wed 8/13/03	Tue 8/19/03						
18	Cabinet wiring	5 days	Wed 8/13/03	Tue 8/19/03						
19	Camera cable connections	5 days	Wed 8/13/03	Tue 8/19/03						
20	Camera pre-shots	5 days	Wed 8/13/03	Tue 8/19/03						
21	Lighting set-up	5 days	Wed 8/13/03	Tue 8/19/03						
22	Signal sensing	5 days	Wed 8/13/03	Tue 8/19/03						
23	Power drop	5 days	Wed 8/13/03	Tue 8/19/03						
24	Router connections	5 days	Wed 8/13/03	Tue 8/19/03						
25	Intersection Configuration - On Site	2 days	Wed 8/20/03	Thu 8/21/03						
26	Intersection Testing & Adjustments	4 days	Fri 8/22/03	Wed 8/27/03						
27	24 hour burn-in & adjustments (1 day)	1 day	Fri 8/22/03	Fri 8/22/03						
28	Grounding	1 day	Fri 8/22/03	Fri 8/22/03						
29	Reconcile ground/interfacing w/ CG (2 days)	2 days	Mon 8/25/03	Mon 8/25/03						
30	Lighting adjustments	2 days	Tue 8/26/03	Tue 8/26/03						
31	City - Warning Sign Installation	3 days	Mon 8/25/03	Wed 8/27/03						
32	Final System Test / Intersection Sign-Off	3 days	Thu 8/28/03	Tue 9/2/03						
33	Final System Test	2 days	Thu 8/28/03	Fri 8/29/03						
34	City Sign-Off / Press Release	1 day	Tue 9/2/03	Tue 9/2/03						
35	Enforcement Begins (Bristol & Anton - N, S, WS)	1 day	Wed 9/3/03	Wed 9/3/03						

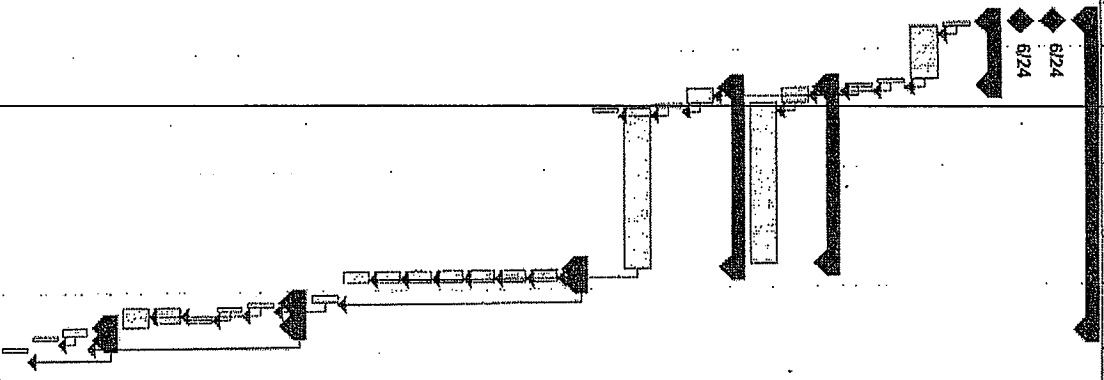


Castle Mesa Red Light Camera Implementation Schedule - Phase 2

September	October	November	December	January	February	March	April	May	June	July	August	September	October
Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct

Cosita Mesa Red Light Camera Implementation Schedule - Phase 3

ID	Task Name	Duration	Start	Finish	May	June	July	August	September
1	Overall Project Schedule	57 days	Tue 6/24/03	Fri 9/12/03					
2	Newport & 17th (N, E, W, SE - - EN)	0 days	Tue 6/24/03	Tue 6/24/03					
3	Newport & 19th (N, S, SE, EN)	0 days	Tue 6/24/03	Tue 6/24/03					
4	Plan Design & Review	12 days	Tue 6/24/03	Thu 7/10/03					
5	Plans Approved by Calltrans	1 day	Tue 6/24/03	Tue 6/24/03					
6	Subcontractor selected	9 days	Wed 6/25/03	Tue 7/8/03					
7	Permits issued to subcontractor	1 day	Wed 7/9/03	Wed 7/9/03					
8	Intersection Walkthrough	1 day	Thu 7/10/03	Thu 7/10/03					
9	Communications & Equipment	32 days	Fri 7/11/03	Mon 8/25/03					
10	Confirm communications infrastructure / set-up	2 days	Fri 7/11/03	Mon 7/14/03					
11	Order communications (Intersection)	30 days	Tue 7/15/03	Mon 8/25/03					
12	Installation	33 days	Fri 7/11/03	Tue 8/26/03					
13	Pre-Construction/Underground survey	2 days	Fri 7/11/03	Mon 7/14/03					
14	Equipment delivery to subcontractor	1 day	Tue 7/15/03	Tue 7/15/03					
15	Site Construction	30 days	Wed 7/16/03	Tue 8/26/03					
16	Includes electrical & communications installation	1 day	Wed 7/16/03	Wed 7/16/03					
17	Initial intersection set-up	3 days	Wed 8/27/03	Fri 8/29/03					
18	Cabinet wiring	3 days	Wed 8/27/03	Fri 8/29/03					
19	Camera cable connections	3 days	Wed 8/27/03	Fri 8/29/03					
20	Camera pre-shots	3 days	Wed 8/27/03	Fri 8/29/03					
21	Lighting set-up	3 days	Wed 8/27/03	Fri 8/29/03					
22	Signal sensing	3 days	Wed 8/27/03	Fri 8/29/03					
23	Power drop	3 days	Wed 8/27/03	Fri 8/29/03					
24	Router connections	2 days	Tue 9/2/03	Wed 9/3/03					
25	Intersection Configuration - On Site	4 days	Thu 9/4/03	Tue 9/9/03					
26	Intersection Testing & Adjustments	1 day	Thu 9/4/03	Thu 9/4/03					
27	24 hour burn-in & adjustments (1 day)	1 day	Fri 9/5/03	Fri 9/5/03					
28	Grounding	1 day	Fri 9/5/03	Mon 9/8/03					
29	Reconcile grounding w/ CG	2 days	Fri 9/5/03	Mon 9/8/03					
30	Lighting adjustments	3 days	Fri 9/5/03	Tue 9/9/03					
31	City - Warning Sign Installation	3 days	Wed 9/10/03	Fri 9/12/03					
32	Final System Test / Intersection Sign-Off	2 days	Wed 9/10/03	Thu 9/11/03					
33	Final System Test	1 day	Fri 9/12/03	Fri 9/12/03					
34	City Sign-Off / Press Release	1 day	Mon 9/15/03	Mon 9/15/03					
35	Enforcement Begins (Newport & 17th / Newport & 19th)	1 day	Mon 9/15/03	Mon 9/15/03					



Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July	Jul
1	Overall Project Schedule	197 days	Wed 7/17/02	Fri 5/2/03		
2	Project Start-up / Initial Intersection Assessment	66 days	Wed 7/17/02	Fri 10/18/02		
3	Contract Executed	1 day	Wed 7/17/02	Wed 7/17/02		
4	Long lead time equipment ordered	65 days	Thu 7/18/02	Fri 10/18/02		
5	Define citation processing / court interface / payment processing	8 days	Thu 7/18/02	Mon 7/29/02		
6	Preliminary Client Meeting w/ NTS	1 day	Wed 7/31/02	Wed 7/31/02		
7	Intersection Pre-Assessment	2 days	Wed 7/31/02	Thu 8/1/02		
8	Client kick-off meeting	45 days	Thu 7/18/02	Thu 9/19/02		
9	Client kick-off meeting w/ all dept reps	1 day	Thu 9/5/02	Thu 9/5/02		
10	Establish contact list / City project leads	0 days	Thu 9/5/02	Thu 9/5/02		
11	Set-up meeting time / reporting format	0 days	Thu 9/5/02	Thu 9/5/02		
12	Review violation process & procedures	0 days	Thu 9/5/02	Thu 9/5/02		
13	Court questionnaire & code/abbreviation info request	10 days	Fri 9/6/02	Thu 9/19/02		
14	Establish DMV procedures/processes	0 days	Thu 9/5/02	Thu 9/5/02		
15	Verify mailing requirements	0 days	Thu 9/5/02	Thu 9/5/02		
16	Obtain City & Police Department logos (jpeg)	5 days	Fri 9/6/02	Thu 9/12/02		
17	Review community awareness requirements	0 days	Thu 9/5/02	Thu 9/5/02		
18	NTS press release	5 days	Thu 7/18/02	Wed 7/24/02		
19	VIP (Intersection Assessment)	73 days	Fri 8/2/02	Thu 11/14/02		
20	Complete VIP	15 days	Fri 8/2/02	Thu 8/22/02		
21	City confirms intersection per VIP data	5 days	Fri 8/23/02	Thu 8/29/02		
22	Signal timing adjustments; confirm all potential intersections	20 days	Fri 8/30/02	Fri 9/27/02		
23	Re-VIP	15 days	Mon 9/30/02	Mon 10/21/02		
24	City confirms intersection per VIP data	18 days	Tue 10/22/02	Thu 11/14/02		
25	Communications & Equipment	82 days	Fri 11/15/02	Fri 3/21/03		
26	Confirm communications infrastructure / set-up	10 days	Fri 11/15/02	Mon 12/2/02		
27	Order communications (Intersection & Police Dept)	45 days	Tue 12/3/02	Tue 2/11/03		
28	Order Police Dept computer equipment	60 days	Tue 12/3/02	Wed 3/5/03		
29	Assess Operations Center equipment needs	5 days	Tue 12/3/02	Mon 12/9/02		
30	Order Operations Center equipment	60 days	Tue 12/10/02	Wed 3/12/03		
31	Customer service phone line order	60 days	Tue 12/3/02	Wed 3/5/03		
32	Configure Police Department equipment	5 days	Thu 3/6/03	Wed 3/12/03		
33	Install Police Department equipment	2 days	Thu 3/13/03	Fri 3/14/03		
34	Test Police Department equipment / communications	5 days	Mon 3/17/03	Fri 3/21/03		
35	Site Planning & Preparation	7 days	Fri 11/15/02	Mon 11/25/02		
36	Site design field survey	1 day	Fri 11/15/02	Fri 11/15/02		
37	Equipment/Camera placement	5 days	Mon 11/18/02	Fri 11/22/02		
38	On site confirmation of placements	1 day	Mon 11/25/02	Mon 11/25/02		
39	Finalize remaining equipment order	1 day	Mon 11/25/02	Mon 11/25/02		
40	Plan Design & Review	41 days	Tue 11/26/02	Fri 1/31/03		
41	Plan design by Eng consultant	15 days	Tue 11/26/02	Wed 12/18/02		
42	Submit plans for City review	10 days	Thu 12/19/02	Wed 1/8/03		
43	City comment plan changes (Eng consultant)	5 days	Thu 1/9/03	Thu 1/16/03		
44	City final plan approval	5 days	Fri 1/17/03	Thu 1/23/03		
45	Subcontractor solicitation	23 days	Thu 12/19/02	Tue 1/28/03		
46	Permits issued to subcontractor	3 days	Wed 1/29/03	Fri 1/31/03		
47	Installation	27 days	Mon 2/3/03	Wed 3/12/03		

Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July	Jul
48	Pre-Construction/Underground survey	2 days	Mon 2/3/03	Tue 2/4/03		
49	Equipment delivery to subcontractor	1 day	Mon 2/3/03	Mon 2/3/03		
50	Site Construction (2 approaches)	25 days	Wed 2/5/03	Wed 3/12/03		
51	Includes electrical & communications installation	1 day	Wed 2/5/03	Wed 2/5/03		
52	Initial Intersection set-up	5 days	Thu 3/13/03	Wed 3/19/03		
53	Cabinet wiring	5 days	Thu 3/13/03	Wed 3/19/03		
54	Camera cable connections	5 days	Thu 3/13/03	Wed 3/19/03		
55	Camera pre-shots	5 days	Thu 3/13/03	Wed 3/19/03		
56	Lighting set-up	5 days	Thu 3/13/03	Wed 3/19/03		
57	Signal sensing	5 days	Thu 3/13/03	Wed 3/19/03		
58	Power drop	5 days	Thu 3/13/03	Wed 3/19/03		
59	Router connections	5 days	Thu 3/13/03	Wed 3/19/03		
60	Intersection Configuration - On Site	2 days	Thu 3/20/03	Fri 3/21/03		
61	Intersection Testing & Adjustments	6 days	Mon 3/24/03	Mon 3/31/03		
62	24 hour burn-in & adjustments (1 day)	1 day	Mon 3/24/03	Mon 3/24/03		
63	Groundtruthing (3 days)	3 days	Tue 3/25/03	Thu 3/27/03		
64	Reconcile groundtruthing w/ CG (2 days)	2 days	Fri 3/28/03	Mon 3/31/03		
65	Lighting adjustments	2 days	Tue 3/25/03	Wed 3/26/03		
66	Final Lighting Certification	1 day	Tue 4/1/03	Tue 4/1/03		
67	Final System Test (2 days)	5 days	Wed 4/2/03	Tue 4/8/03		
68	Additional Groundtruthing	3 days	Wed 4/2/03	Fri 4/4/03		
69	City Sign-Off	1 day	Mon 4/7/03	Mon 4/7/03		
70	Intersection Start Date (Warning Period Begins)	1 day	Tue 4/8/03	Tue 4/8/03		
71	Citation Processing / Operations	165 days	Fri 8/30/02	Fri 5/2/03		
72	DMV	65 days	Fri 9/6/02	Tue 12/10/02		
73	Define DMV interface requirements	5 days	Fri 9/6/02	Thu 9/12/02		
74	DMV access codes / permits	15 days	Fri 9/13/02	Thu 10/3/02		
75	DMV approval	15 days	Fri 10/4/02	Fri 10/25/02		
76	CitationComposer / DMV programming	15 days	Mon 10/28/02	Fri 11/15/02		
77	DMV testing	15 days	Mon 11/18/02	Tue 12/10/02		
78	Court	60 days	Fri 9/20/02	Tue 12/17/02		
79	Define/Develop court interface requirements	45 days	Fri 9/20/02	Fri 11/22/02		
80	Finalize appearance date / court holiday formula	2 days	Fri 9/20/02	Mon 9/23/02		
81	Failure to Appear (FTA) procedures	2 days	Fri 9/20/02	Mon 9/23/02		
82	Confirm disposition reporting requirements / format	10 days	Fri 9/20/02	Thu 10/3/02		
83	Develop payment processing (as required)	60 days	Fri 9/20/02	Tue 12/17/02		
84	Court Interface testing	5 days	Mon 11/25/02	Tue 12/3/02		
85	Forms / Documents	74 days	Fri 9/5/02	Mon 12/23/02		
86	Warning Notice	13 days	Fri 9/6/02	Tue 9/24/02		
87	Develop warning notice draft (standard template) w/ city logos	1 day	Fri 9/6/02	Fri 9/6/02		
88	Client review - warning notice	10 days	Mon 9/9/02	Fri 9/20/02		
89	Integrate final draft into CitationComposer software	2 days	Mon 9/23/02	Tue 9/24/02		
90	Citation	23 days	Mon 9/23/02	Thu 10/24/02		
91	Develop citation notice draft (standard template) w/ city logos	1 day	Mon 9/23/02	Mon 9/23/02		
92	Client review - citation notice	10 days	Tue 9/24/02	Mon 10/7/02		
93	Judicial Council review - notice to appear	10 days	Tue 10/8/02	Tue 10/22/02		
94	Integrate final draft into CitationComposer software	2 days	Wed 10/23/02	Thu 10/24/02		

Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July
					Jul
95	Mailing Documents	19 days	Tue 9/24/02	Mon 10/21/02	
96	Develop Certificate of Mailing	2 days	Tue 9/24/02	Wed 9/25/02	
97	Client review - Cert of Mailing	5 days	Thu 9/26/02	Wed 10/2/02	
98	USPS review - Cert of Mailing	10 days	Thu 10/3/02	Thu 10/17/02	
99	Integrate final draft into CitationComposer software	2 days	Fri 10/18/02	Mon 10/21/02	
100	Delinquent/Second Notices	8 days	Tue 10/8/02	Fri 10/18/02	
101	Develop delinquent / second notice (as required)	1 day	Tue 10/8/02	Tue 10/8/02	
102	Client review - delinquent/second notice	5 days	Wed 10/9/02	Wed 10/16/02	
103	Integrate final draft into CitationComposer software	2 days	Thu 10/17/02	Fri 10/18/02	
104	Void/Cancellations	8 days	Thu 10/17/02	Mon 10/28/02	
105	Develop void/cancellation draft w/ city logos	1 day	Thu 10/17/02	Thu 10/17/02	
106	Client review - void/cancellation document	5 days	Fri 10/18/02	Thu 10/24/02	
107	Integrate final draft into CitationComposer software	2 days	Fri 10/25/02	Mon 10/28/02	
108	IVR	42 days	Wed 10/23/02	Mon 12/23/02	
109	Develop IVR script	2 days	Wed 10/23/02	Thu 10/24/02	
110	Client review - IVR script	10 days	Fri 10/25/02	Thu 11/7/02	
111	IVR implementation	30 days	Fri 11/8/02	Mon 12/23/02	
112	Customer Service Center	22 days	Fri 11/8/02	Wed 12/11/02	
113	Review client procedures/processes	1 day	Fri 11/8/02	Fri 11/8/02	
114	Mail processes definitions, testing	5 days	Mon 11/11/02	Fri 11/15/02	
115	Print processes definitions, testing	5 days	Mon 11/18/02	Fri 11/22/02	
116	Payment processes definitions, testing (as required)	5 days	Mon 11/25/02	Tue 12/3/02	
117	Finalize customer service process (appt scheduling/ Q&A)	1 day	Wed 12/4/02	Wed 12/4/02	
118	Customer Service Center testing	5 days	Thu 12/5/02	Wed 12/11/02	
119	Reporting	20 days	Fri 11/8/02	Mon 12/9/02	
120	Establish project reporting guidelines	5 days	Fri 11/8/02	Thu 11/14/02	
121	Develop reports / billing format	10 days	Fri 11/15/02	Mon 12/2/02	
122	Report format test / print	5 days	Tue 12/3/02	Mon 12/9/02	
123	Court Hearings	6 days	Fri 11/8/02	Fri 11/15/02	
124	Determine evidence requirements	1 day	Fri 11/8/02	Fri 11/8/02	
125	Develop evidence presentation format for court	5 days	Mon 11/11/02	Fri 11/15/02	
126	Community Awareness / Warning Signs	66 days	Fri 8/30/02	Thu 12/5/02	
127	Propose warning signs to City	10 days	Fri 8/30/02	Fri 9/13/02	
128	Order warning signs	45 days	Mon 9/16/02	Mon 11/18/02	
129	Deliver warning signs to City for installation	5 days	Tue 11/19/02	Mon 11/25/02	
130	Review City public awareness campaign literature	5 days	Tue 11/26/02	Wed 12/4/02	
131	City public speaker's training	1 day	Thu 12/5/02	Thu 12/5/02	
132	Final System Test (Violation to Citation)	6 days	Mon 3/24/03	Mon 3/31/03	
133	Phones/Printing/Mailing	5 days	Mon 3/24/03	Fri 3/28/03	
134	Final QA/Review all client documents	1 day	Mon 3/31/03	Mon 3/31/03	
135	Generate data for client training database	5 days	Mon 3/24/03	Fri 3/28/03	
136	Training	3 days	Mon 3/31/03	Wed 4/2/03	
137	Establish training database	1 day	Mon 3/31/03	Mon 3/31/03	
138	Police Department	2 days	Tue 4/1/03	Wed 4/2/03	
139	City issuance criteria requirements	30 days	Mon 3/24/03	Fri 5/2/03	
140	Develop Client Procedures & Policies (P&P) document	15 days	Mon 3/24/03	Fri 4/11/03	
141	Client review - P&P document / Final documents	12 days	Mon 4/14/03	Tue 4/29/03	

Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July
					Jul
142	Finalize P&P document w/ client	1 day	Wed 4/30/03	Wed 4/30/03	
143	Send approved P&P copy to NTS citation processing lead	1 day	Thu 5/1/03	Thu 5/1/03	
144	City press release - intersection start date	1 day	Fri 5/2/03	Fri 5/2/03	
145	Press conference - intersection start date	1 day	Tue 4/8/03	Tue 4/8/03	
146	Warning Period (1 intersection / 4 approaches)	22 days	Tue 4/8/03	Wed 5/7/03	
147	Transition to Enforcement	1 day	Thu 5/8/03	Thu 5/8/03	
148	Enforcement Begins	1 day	Fri 5/9/03	Fri 5/9/03	
149	Court (Admin & Judges) (if available)	1 day	Thu 5/15/03	Thu 5/15/03	

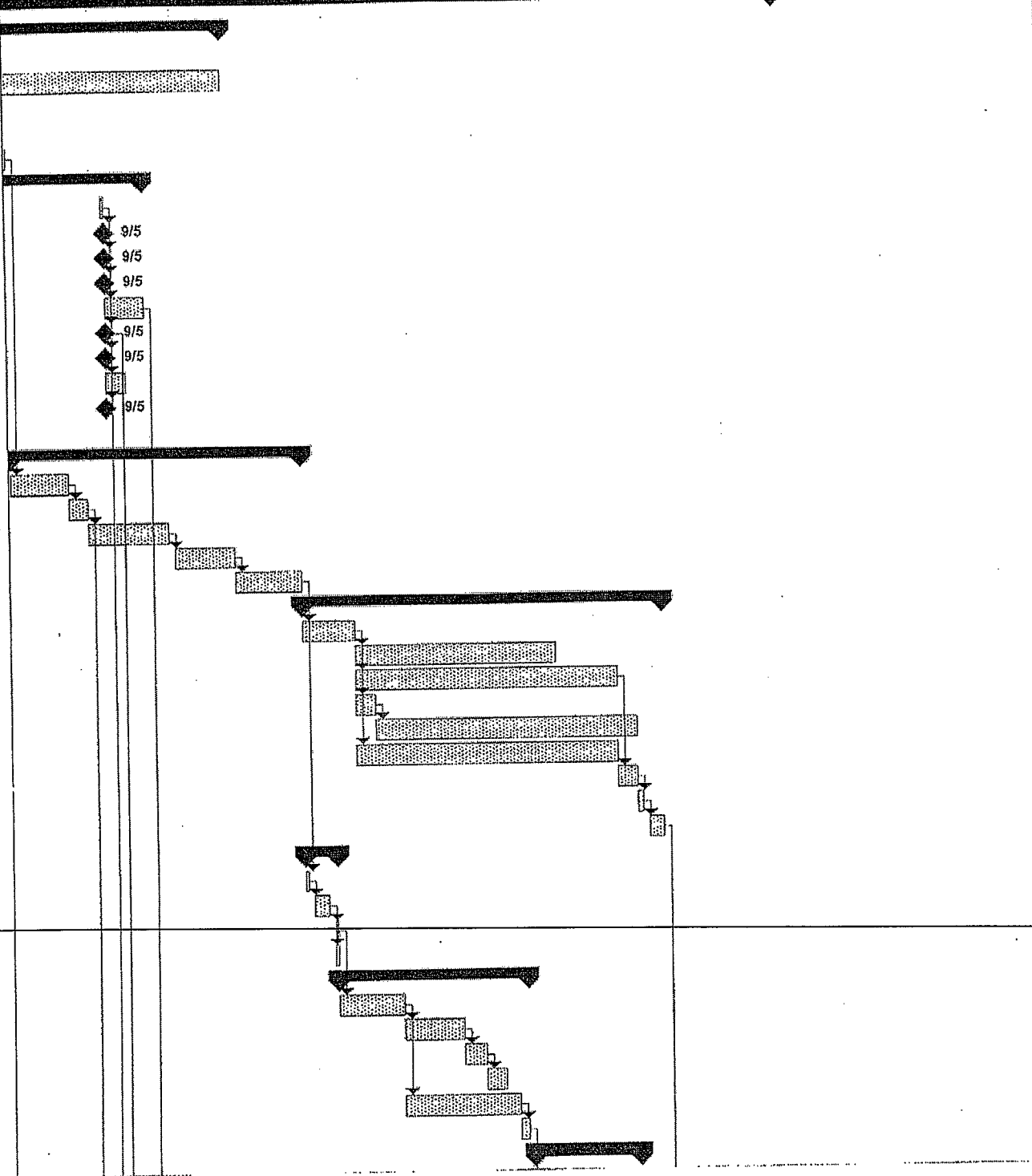
Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

August	September	October	November	December	January	February	March	April	May	June	July
Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul

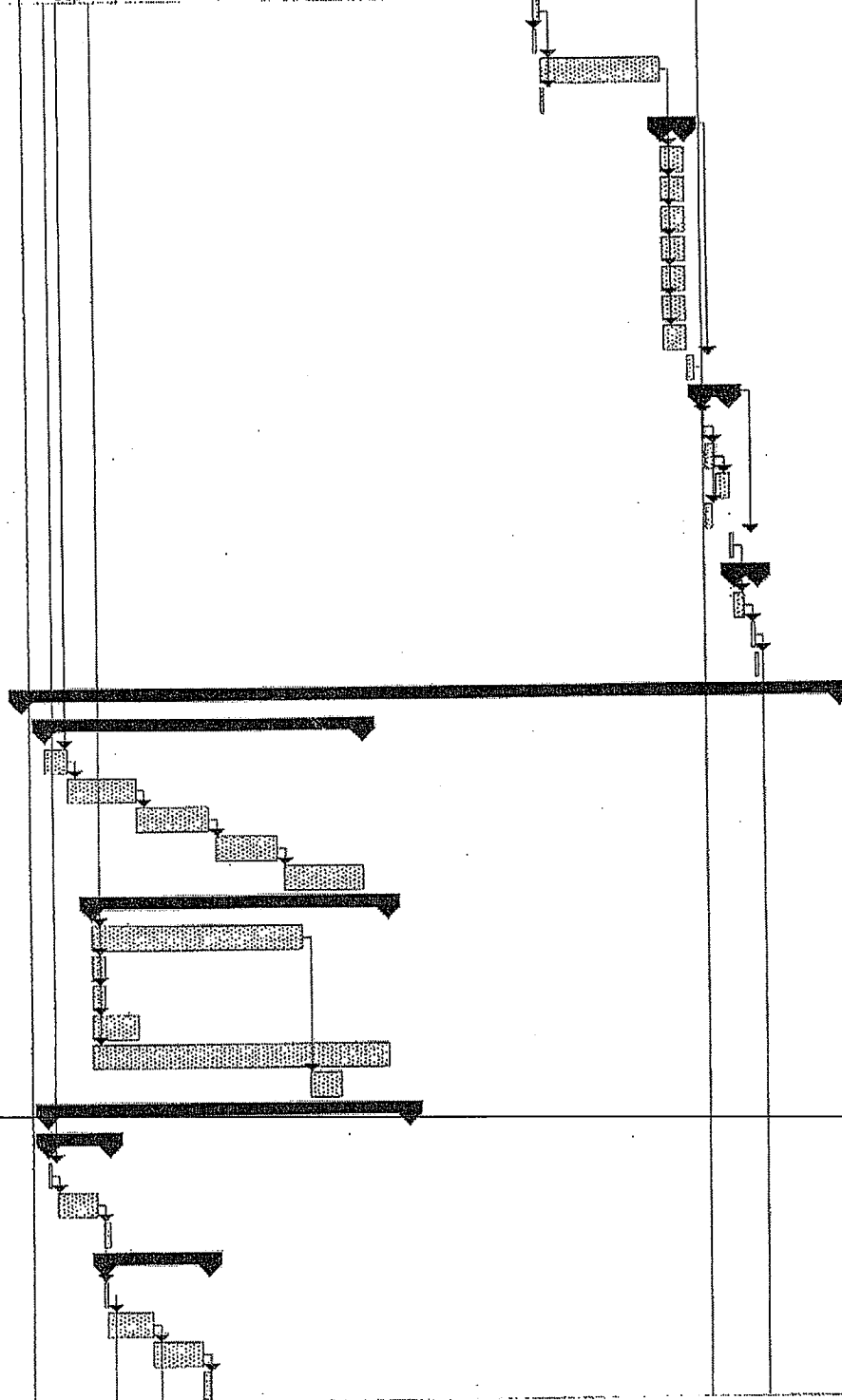


Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

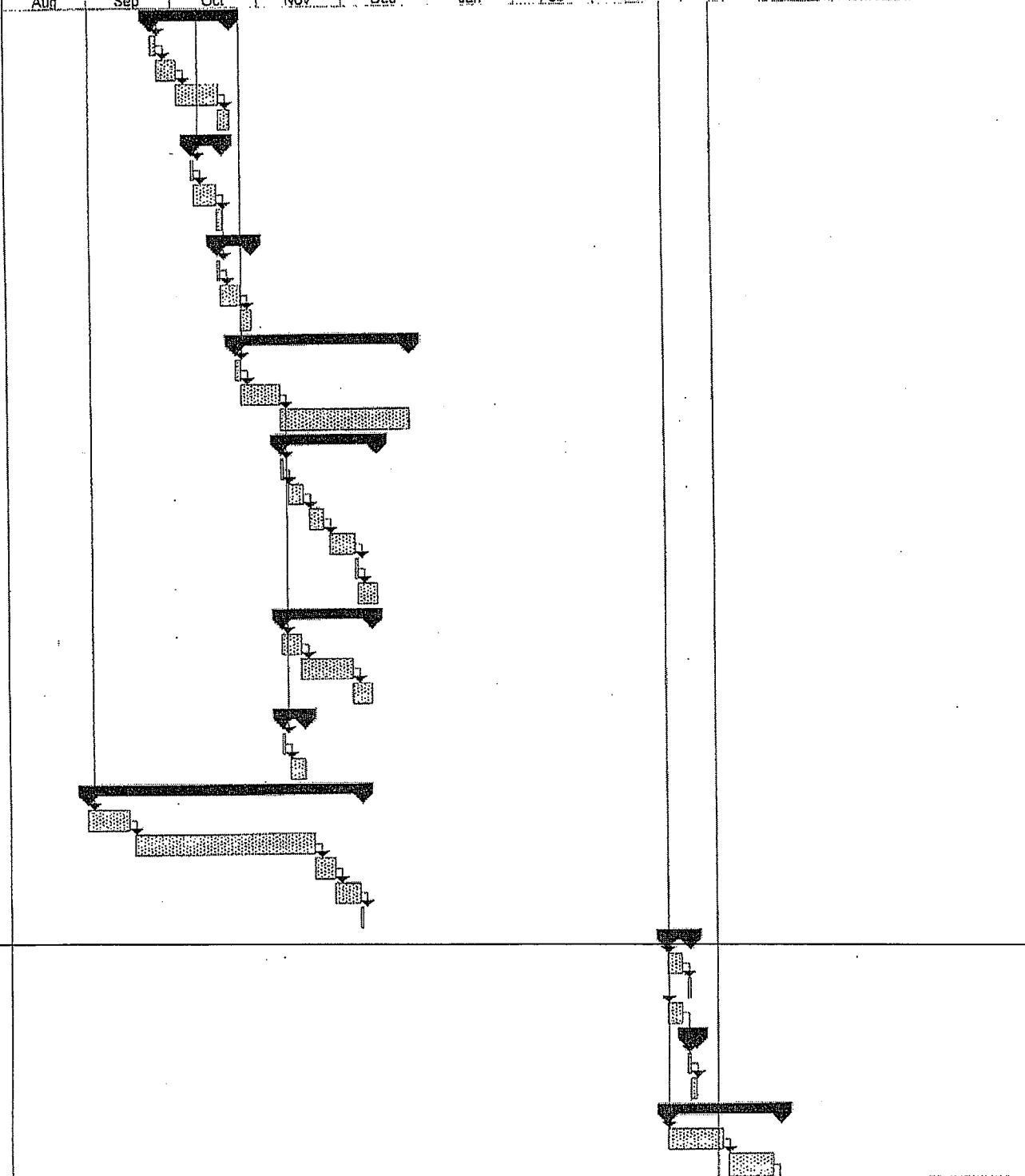
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Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul



August	September	October	November	December	January	February	March	April	May	June	July
Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul



August	September	October	November	December	January	February	March	April	May	June	July
Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul



Costa Mesa Red Light Camera Implementation Schedule (Phase 1)

August	September	October	November	December	January	February	March	April	May	June	July
Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul

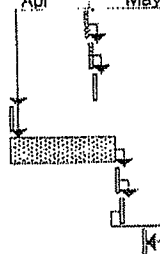


Exhibit D

Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July	
					Jul	
1	Overall Project Schedule	208 days	Wed 7/17/02	Mon 5/19/03		
2	Project Start-up / Initial Intersection Assessment	66 days	Wed 7/17/02	Fri 10/18/02		
3	Contract Executed	1 day	Wed 7/17/02	Wed 7/17/02		
4	Long lead time equipment ordered	65 days	Thu 7/18/02	Fri 10/18/02		
5	Define citation processing / court interface / payment processing	8 days	Thu 7/18/02	Mon 7/29/02		
6	Preliminary Client Meeting w/ NTS	1 day	Wed 7/31/02	Wed 7/31/02		
7	Intersection Pre-Assessment	2 days	Wed 7/31/02	Thu 8/1/02		
8	Client kick-off meeting	45 days	Thu 7/18/02	Thu 9/19/02		
9	Client kick-off meeting w/ all dept reps	1 day	Thu 9/5/02	Thu 9/5/02		
10	Establish contact list / City project leads	0 days	Thu 9/5/02	Thu 9/5/02		
11	Set-up meeting time / reporting format	0 days	Thu 9/5/02	Thu 9/5/02		
12	Review violation process & procedures	0 days	Thu 9/5/02	Thu 9/5/02		
13	Court questionnaire & code/abbreviation info request	10 days	Fri 9/6/02	Thu 9/19/02		
14	Establish DMV procedures/processes	0 days	Thu 9/5/02	Thu 9/5/02		
15	Verify mailing requirements	0 days	Thu 9/5/02	Thu 9/5/02		
16	Obtain City & Police Department logos (jpeg)	5 days	Fri 9/6/02	Thu 9/12/02		
17	Review community awareness requirements	0 days	Thu 9/5/02	Thu 9/5/02		
18	NTS press release	5 days	Thu 7/18/02	Wed 7/24/02		
19	VIP (Intersection Assessment)	73 days	Fri 8/2/02	Thu 11/14/02		
20	Complete VIP	15 days	Fri 8/2/02	Thu 8/22/02		
21	City confirms intersection per VIP data	5 days	Fri 8/23/02	Thu 8/29/02		
22	Signal timing adjustments; confirm all potential intersections	20 days	Fri 8/30/02	Fri 9/27/02		
23	Re-VIP	15 days	Mon 9/30/02	Mon 10/21/02		
24	City confirms intersection per VIP data	18 days	Tue 10/22/02	Thu 11/14/02		
25	Communications & Equipment	82 days	Fri 11/15/02	Fri 3/21/03		
26	Confirm communications infrastructure / set-up	10 days	Fri 11/15/02	Mon 12/2/02		
27	Order communications (Intersection & Police Dept)	45 days	Tue 12/3/02	Tue 2/11/03		
28	Order Police Dept computer equipment	60 days	Tue 12/3/02	Wed 3/5/03		
29	Assess Operations Center equipment needs	5 days	Tue 12/3/02	Mon 12/9/02		
30	Order Operations Center equipment	60 days	Tue 12/10/02	Wed 3/12/03		
31	Customer service phone line order	60 days	Tue 12/3/02	Wed 3/5/03		
32	Configure Police Department equipment	5 days	Thu 3/6/03	Wed 3/12/03		
33	Install Police Department equipment	2 days	Thu 3/13/03	Fri 3/14/03		
34	Test Police Department equipment / communications	5 days	Mon 3/17/03	Fri 3/21/03		
35	Site Planning & Preparation	7 days	Fri 11/15/02	Mon 11/25/02		
36	Site design field survey	1 day	Fri 11/15/02	Fri 11/15/02		
37	Equipment/Camera placement	5 days	Mon 11/18/02	Fri 11/22/02		
38	On-site confirmation of placements	1 day	Mon 11/25/02	Mon 11/25/02		
39	Finalize remaining equipment order	1 day	Mon 11/25/02	Mon 11/25/02		
40	Plan Design & Review	61 days	Tue 11/26/02	Mon 3/3/03		
41	Plan design by Eng consultant	15 days	Tue 11/26/02	Wed 12/18/02		
42	Submit plans for City review	10 days	Thu 12/19/02	Wed 1/8/03		
43	City comment plan changes (Eng consultant)	5 days	Thu 1/9/03	Thu 1/16/03		
44	City final plan approval	28 days	Fri 1/17/03	Wed 2/26/03		
45	Subcontractor solicitation	15 days	Fri 1/17/03	Thu 2/6/03		
46	Permits issued to subcontractor	3 days	Thu 2/27/03	Mon 3/3/03		
47	Installation	23 days	Thu 2/27/03	Mon 3/31/03		
48	Pre-Construction/Underground survey	2 days	Thu 2/27/03	Fri 2/28/03		

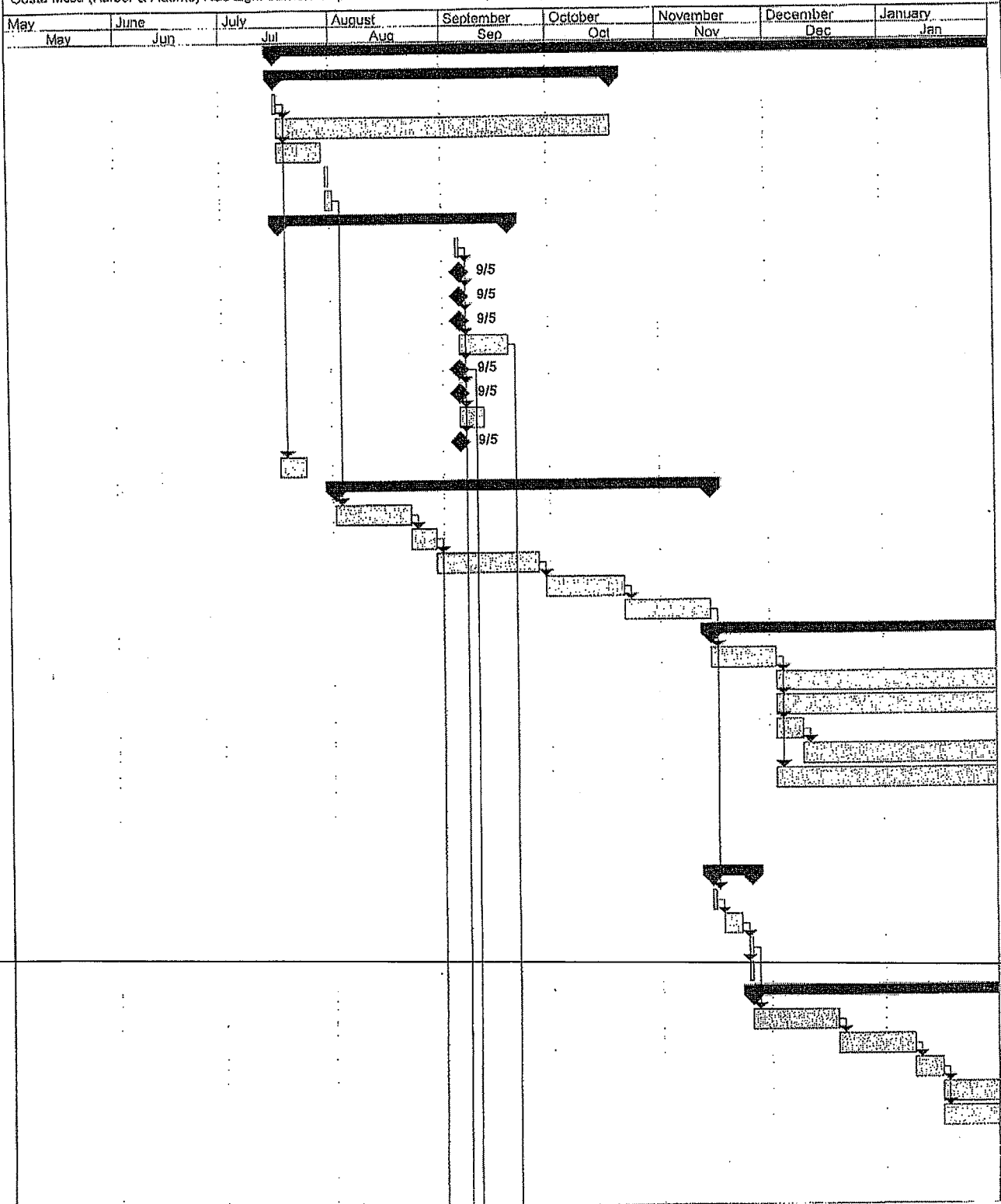
Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July
					Jul
49	Equipment delivery to subcontractor	1 day	Tue 3/4/03	Tue 3/4/03	
50	Site Construction (2 approaches)	20 days	Tue 3/4/03	Mon 3/31/03	
51	Includes electrical & communications installation	1 day	Mon 3/3/03	Mon 3/3/03	
52	Initial intersection set-up	5 days	Tue 4/1/03	Mon 4/7/03	
53	Cabinet wiring	5 days	Tue 4/1/03	Mon 4/7/03	
54	Camera cable connections	5 days	Tue 4/1/03	Mon 4/7/03	
55	Camera pre-shots	5 days	Tue 4/1/03	Mon 4/7/03	
56	Lighting set-up	5 days	Tue 4/1/03	Mon 4/7/03	
57	Signal sensing	5 days	Tue 4/1/03	Mon 4/7/03	
58	Power drop	5 days	Tue 4/1/03	Mon 4/7/03	
59	Router connections	5 days	Tue 4/1/03	Mon 4/7/03	
60	Intersection Configuration - On Site	2 days	Tue 4/8/03	Wed 4/9/03	
61	Intersection Testing & Adjustments	4 days	Thu 4/10/03	Tue 4/15/03	
62	48 hour burn-in & adjustments	2 days	Thu 4/10/03	Fri 4/11/03	
63	Lighting adjustments	2 days	Mon 4/14/03	Tue 4/15/03	
64	Final Lighting Certification	1 day	Wed 4/16/03	Wed 4/16/03	
65	Final System Test (2 days)	3 days	Thu 4/17/03	Mon 4/21/03	
66	Final system check	1 day	Thu 4/17/03	Thu 4/17/03	
67	City Sign-Off	1 day	Fri 4/18/03	Fri 4/18/03	
68	Intersection Start Date (Warning Period Begins)	1 day	Mon 4/21/03	Mon 4/21/03	
69	Citation Processing / Operations	176 days	Fri 8/30/02	Mon 5/19/03	
70	DMV	65 days	Fri 9/6/02	Tue 12/10/02	
71	Define DMV interface requirements	5 days	Fri 9/6/02	Thu 9/12/02	
72	DMV access codes / permits	15 days	Fri 9/13/02	Thu 10/3/02	
73	DMV approval	15 days	Fri 10/4/02	Fri 10/25/02	
74	CitationComposer / DMV programming	15 days	Mon 10/28/02	Fri 11/15/02	
75	DMV testing	15 days	Mon 11/18/02	Tue 12/10/02	
76	Court	132 days	Fri 9/20/02	Mon 4/7/03	
77	Define/Develop court interface requirements	45 days	Fri 9/20/02	Fri 11/22/02	
78	Finalize appearance date / court holiday formula	2 days	Fri 9/20/02	Mon 9/23/02	
79	Failure to Appear (FTA) procedures	2 days	Fri 9/20/02	Mon 9/23/02	
80	Confirm disposition reporting requirements / format	10 days	Fri 9/20/02	Thu 10/3/02	
81	Court interface testing	5 days	Tue 4/1/03	Mon 4/7/03	
82	Forms / Documents	172 days	Fri 9/6/02	Mon 5/19/03	
83	Warning Notice	13 days	Fri 9/6/02	Tue 9/24/02	
84	Develop warning notice draft (standard template) w/ city logos	1 day	Fri 9/6/02	Fri 9/6/02	
85	Client review - warning notice	10 days	Mon 9/9/02	Fri 9/20/02	
86	Integrate final draft into CitationComposer software	2 days	Mon 9/23/02	Tue 9/24/02	
87	Citation	138 days	Mon 9/23/02	Wed 4/16/03	
88	Develop citation notice draft (standard template) w/ city logos	1 day	Mon 9/23/02	Mon 9/23/02	
89	Client review - citation notice	10 days	Tue 3/4/03	Mon 3/17/03	
90	Judicial Council review - notice to appear	10 days	Tue 4/1/03	Mon 4/14/03	
91	Integrate final draft into CitationComposer software	2 days	Tue 4/15/03	Wed 4/16/03	
92	Mailing Documents	19 days	Tue 3/18/03	Fri 4/11/03	
93	Develop Certificate of Mailing	2 days	Tue 3/18/03	Wed 3/19/03	
94	Client review - Cert of Mailing	5 days	Thu 3/20/03	Wed 3/26/03	
95	USPS review - Cert of Mailing	10 days	Thu 3/27/03	Wed 4/9/03	
96	Integrate final draft into CitationComposer software	2 days	Thu 4/10/03	Fri 4/11/03	

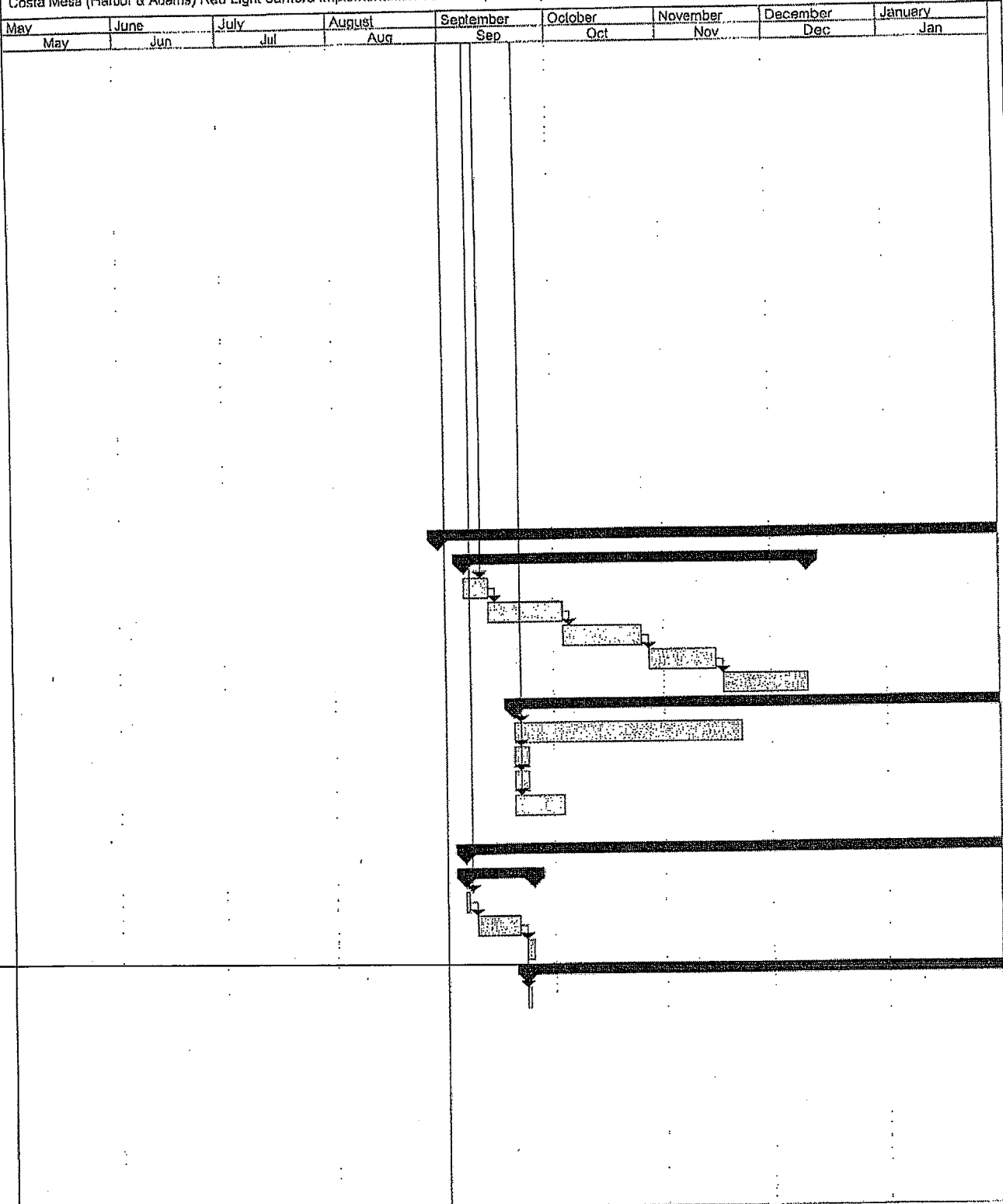
Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)

ID	Task Name	Duration	Start	Finish	July
					Jul
97	Void/Cancellations	8 days	Thu 3/20/03	Mon 3/31/03	
98	Develop void/cancellation draft w/ city logos	1 day	Thu 3/20/03	Thu 3/20/03	
99	Client review - void/cancellation document	5 days	Fri 3/21/03	Thu 3/27/03	
100	Integrate final draft into CitationComposer software	2 days	Fri 3/28/03	Mon 3/31/03	
101	Phone Script	42 days	Fri 3/21/03	Mon 5/19/03	
102	Develop Phone script	2 days	Fri 3/21/03	Mon 3/24/03	
103	Client review - Phone script	10 days	Tue 3/25/03	Mon 4/7/03	
104	Phone script training / implementation	30 days	Tue 4/8/03	Mon 5/19/03	
105	Customer Service Center	22 days	Tue 4/8/03	Wed 5/7/03	
106	Review client procedures/processes	1 day	Tue 4/8/03	Tue 4/8/03	
107	Mail processes definitions, testing	5 days	Wed 4/9/03	Tue 4/15/03	
108	Print processes definitions, testing	5 days	Wed 4/16/03	Tue 4/22/03	
109	Payment processes definitions, testing (as required)	5 days	Wed 4/23/03	Tue 4/29/03	
110	Finalize customer service process (appt scheduling/ Q&A)	1 day	Wed 4/30/03	Wed 4/30/03	
111	Customer Service Center testing	5 days	Thu 5/1/03	Wed 5/7/03	
112	Reporting	20 days	Tue 4/8/03	Mon 5/5/03	
113	Establish project reporting guidelines	5 days	Tue 4/8/03	Mon 4/14/03	
114	Develop reports / billing format	10 days	Tue 4/15/03	Mon 4/28/03	
115	Report format test / print	5 days	Tue 4/29/03	Mon 5/5/03	
116	Court Hearings	15 days	Tue 4/8/03	Mon 4/28/03	
117	Determine evidence requirements	1 day	Tue 4/8/03	Tue 4/8/03	
118	Develop evidence presentation format for court	5 days	Tue 4/22/03	Mon 4/28/03	
119	Community Awareness / Warning Signs	152 days	Fri 8/30/02	Tue 4/15/03	
120	Propose warning signs to City	10 days	Fri 8/30/02	Fri 9/13/02	
121	Order warning signs	45 days	Mon 9/16/02	Mon 11/18/02	
122	Deliver warning signs to City for installation	5 days	Tue 4/1/03	Mon 4/7/03	
123	Review City public awareness campaign literature	5 days	Tue 4/8/03	Mon 4/14/03	
124	City public speaker's training	1 day	Tue 4/15/03	Tue 4/15/03	
125	Final System Test (Violation to Citation)	6 days	Thu 4/10/03	Thu 4/17/03	
126	Phones/Printing/Mailing	5 days	Thu 4/10/03	Wed 4/16/03	
127	Final QA/Review all client documents	1 day	Thu 4/17/03	Thu 4/17/03	
128	Generate data for client training database	5 days	Thu 4/10/03	Wed 4/16/03	
129	Training	3 days	Thu 4/17/03	Mon 4/21/03	
130	Establish training database	1 day	Thu 4/17/03	Thu 4/17/03	
131	Police Department	2 days	Fri 4/18/03	Mon 4/21/03	
132	City Issuance criteria requirements	30 days	Mon 3/24/03	Fri 5/2/03	
133	Develop Client Procedures & Policies (P&P) document	15 days	Mon 3/24/03	Fri 4/11/03	
134	Client review - P&P document / Final documents	12 days	Mon 4/14/03	Tue 4/29/03	
135	Finalize P&P document w/ client	1 day	Wed 4/30/03	Wed 4/30/03	
136	Send approved P&P copy to NTS citation processing lead	1 day	Thu 5/1/03	Thu 5/1/03	
137	City press release - intersection start date	1 day	Fri 5/2/03	Fri 5/2/03	
138	Press conference - intersection start date	1 day	Mon 4/21/03	Mon 4/21/03	
139	Warning Period (1 intersection / 2 approaches)	22 days	Mon 4/21/03	Tue 5/20/03	
140	Transition to Enforcement	1 day	Wed 5/21/03	Wed 5/21/03	
141	Enforcement Begins	1 day	Thu 5/22/03	Thu 5/22/03	
142	Court (Admin & Judgas) (if available)	1 day	Thu 5/29/03	Thu 5/29/03	

Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)



Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)



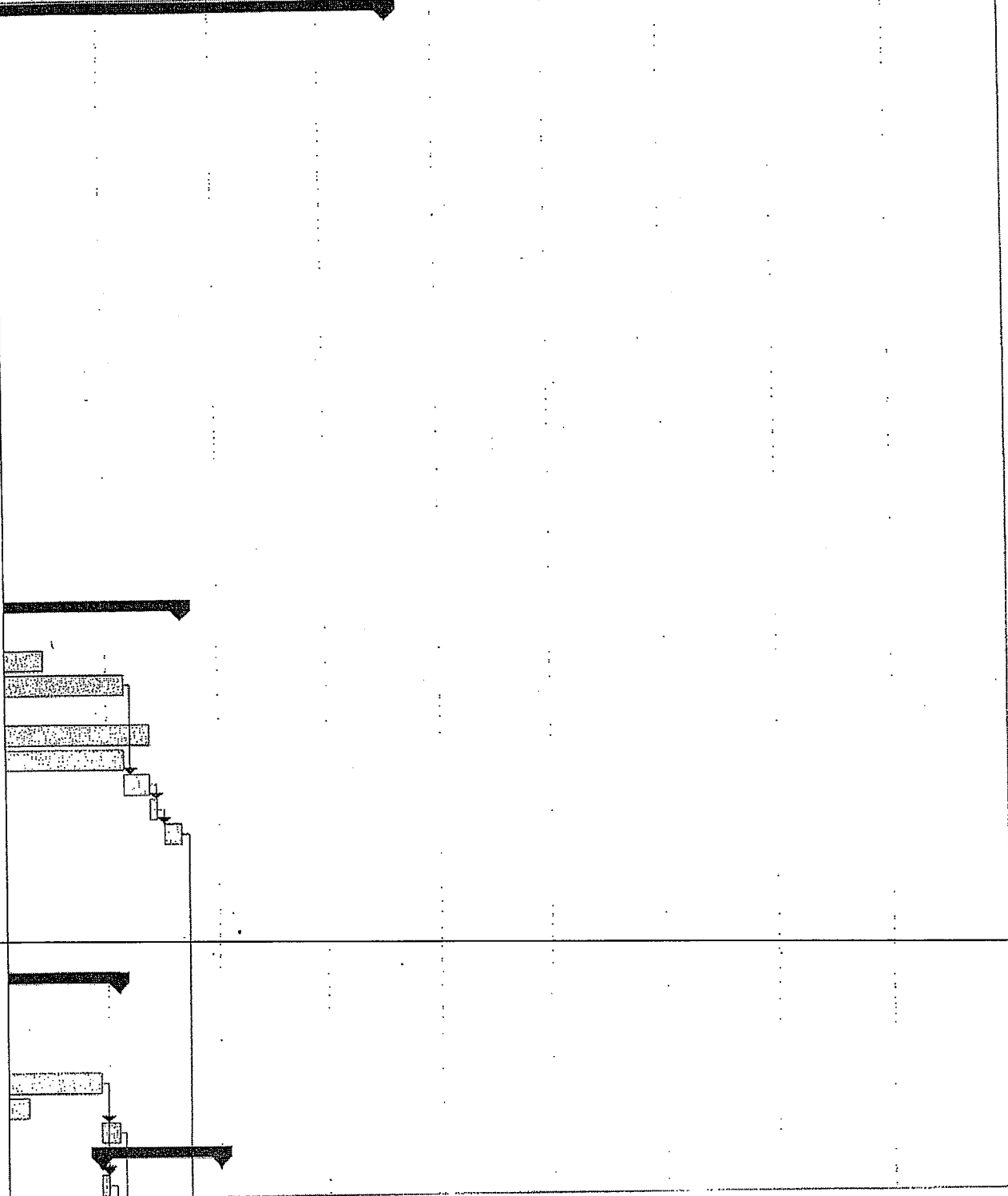
Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)

May	June	July	August	September	October	November	December	January
May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan

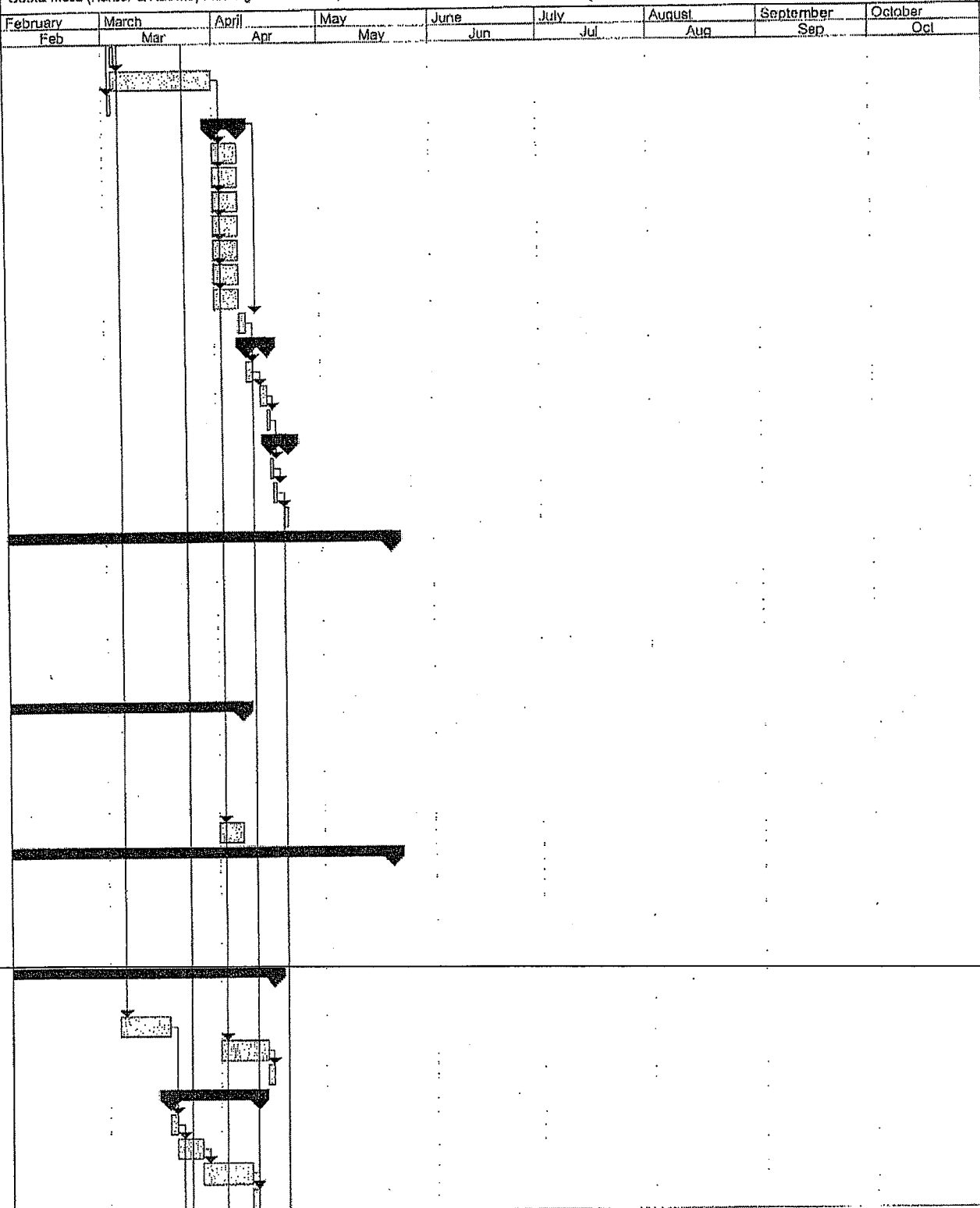


Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)

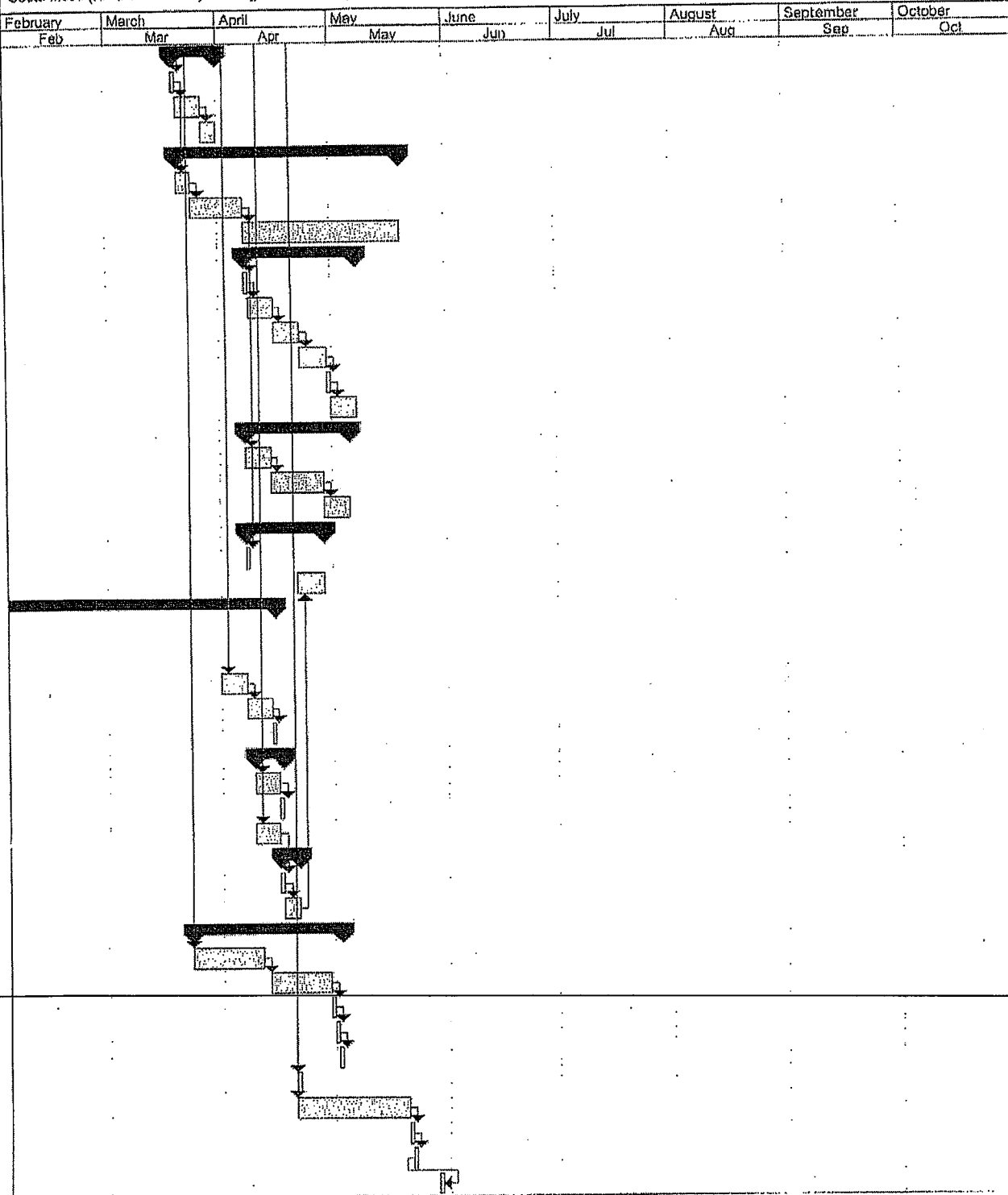
February	March	April	May	June	July	August	September	October
Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct



Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)



Costa Mesa (Harbor & Adams) Red Light Camera Implementation Schedule (Phase 1)



ADDENDUM NUMBER ONE
TO
TRAFFIC SIGNAL VIOLATIONS VIDEO-MONITORING SYSTEM SERVICES
AGREEMENT

This Addendum is made and entered into this 30th day of April ("Effective Date") by and between Nestor Traffic Systems, Inc., a Delaware corporation ("Nestor") and the City of Costa Mesa, a municipal corporation ("City").

WHEREAS, Nestor and City entered into an agreement dated July 15, 2002 for traffic signal violations video-monitoring services (the "Agreement"); and

WHEREAS, Nestor and City now wish to add to the Agreement to address the retention periods of data used in traffic citations issued pursuant to the Agreement;

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. All Citation information (including violator information and video evidence) ("Data") contained in Citations that do not meet initial issuance criteria, and are subsequently discarded, shall be purged from the electronic database within sixty (60) days from the date of discard.

All Data contained in Citations that are initially issued and later dismissed, either by a reviewing officer, or by the court (unless pending appeal), shall be destroyed within sixty (60) days from the date of dismissal.

All Data contained in Citations in which the Citation is paid, bail is forfeited, or after trial, shall be retained for a period of three years from the date of issuance and then destroyed within six (6) months of the end of such three year period.

The method of destruction of all Citation Data shall be in a manner such that it cannot be reproduced or identified in any physical or electronic form. Said method of destruction of all Data shall be approved by the City pursuant to its document retention/destruction policies. City or its authorized representative, upon reasonable notice, shall have the right, during normal business hours, to examine and audit any and all records, books, papers, and documents related to the destruction of Data by Nestor to the extent City believes necessary to assure verification and compliance.

2. All terms not herein defined shall have the same meaning and use as set forth in the Agreement.

3. All other terms, conditions and provisions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hand by their duly authorized representative as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

By: 

Name: Nigel P. Hebborn

Title: CEO

CITY OF COSTA MESA

By: 

Name:

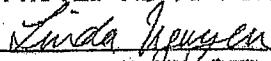
KARL SCHULER

Title:

TRAFFIC LIEUTENANT

APPROVED AS TO FORM

BY:


CITY ATTORNEY'S OFFICE
CITY OF COSTA MESA

ADDENDUM NUMBER TWO
TO
TRAFFIC SIGNAL VIOLATIONS VIDEO-MONITORING SYSTEM SERVICES
AGREEMENT

This Addendum is made and entered into this 31st day of July ("Effective Date") by and between Nestor Traffic Systems, Inc., a Delaware corporation ("Nestor") and the City of Costa Mesa, a municipal corporation ("City").

WHEREAS, Nestor and City entered into an agreement dated July 15, 2002 for traffic signal violations video-monitoring services (the "Agreement"); and

WHEREAS, Nestor and City now wish to amend the Agreement to provide for a fixed monthly fee structure effective for all billing periods commencing on July 1, 2003;

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Section 4.1 of the Agreement is hereby deleted effective July 1, 2003 and replaced by the following:

"4.1 The Municipality shall pay Nestor a monthly fee (the "Monthly Per Approach Fee") for each Installed Approach as follows:

Schedule 1: Average (over all Installed Approaches) of < 100 citations issued per
Installed Approach per month - \$ 7,000 per Installed Approach

Schedule 2: Average (over all Installed Approaches) of 100 to 150 citations issued per
Installed Approach per month - \$ 9,000 per Installed Approach

Schedule 3: Average (over all Installed Approaches) of > 150 citations issued per
Installed Approach per month - \$11,000 per Installed Approach

"Installed Approach" shall mean any enforced direction of travel on an individual access road or street to any intersection that is monitored by the System and through which the Municipality has commenced issuing citations. If and to the extent that (1) an Installed Approach subject to a Monthly Per Approach Fee is not capable of detecting violations and/or issuing Transmitted Violations; or (2) Nestor is unable to print and/or mail Citations, in either case, for more than five (5) consecutive days in any calendar month as a result of system malfunctions not caused by the Municipality or an event described in section 9.9 of the Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the Monthly Per Approach Fee for that month equal to: the respective approach's, or the System's (as applicable) Monthly Per Approach Fee multiplied by the total number of days the approach or System, as the case may be, was incapable of detecting violations, issuing Transmitted Violations and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days."

2. Section 4.3 of the Agreement is hereby deleted effective July 1, 2003 and replaced by the following:

"4.3 Municipality acknowledges and agrees that:

(i) In the event this Agreement is terminated by Nestor pursuant to Section 3.1, or the Municipality pursuant to Section 3.9 prior to the expiration of the Initial Term, the termination and cancellation fee shall equal the product of (a) \$80,000 times the number of Installed Approaches multiplied by (b) the Remaining Term in months divided by the Initial Term (60 months). The "Remaining Term" shall equal the number of months in the Initial Term of this Agreement from the Installation Date (i.e., 60 months) minus the number of whole months from the Installation Date to the date of termination.

(ii) In the event this Agreement is terminated pursuant to Section 3.7 or 3.8, the termination and cancellation fee shall equal the product of (a) \$60,062 times the number of Installed Approaches multiplied by (b) the Remaining Term in months divided by 36 months except that the "Remaining Term" shall equal 36 months minus the number of whole months from the Installation Date to the date of termination." In the event this Agreement is terminated pursuant to Section 3.7 or 3.8 subsequent to the expiration of the 36 month anniversary of the Installation Date, there shall be no termination or cancellation fee.

3. All terms not herein defined shall have the same meaning and use as set forth in the Agreement.

4. All other terms, conditions and provisions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hand by their duly authorized representative as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

By: 

Name: Nigel P. Hebborn

Title: President & CEO

CITY OF COSTA MESA

By: 

Mayor

APPROVED AS TO CONTENT

By: 

Project Manager

APPROVED AS TO FORM

By: 

for City Attorney

**ADDENDUM NUMBER THREE
TO
TRAFFIC SIGNAL VIOLATIONS VIDEO-MONITORING SYSTEM SERVICES
AGREEMENT**

This Third Addendum is made and entered into this 3rd day of June, 2008 ("Effective Date") by and between Nestor Traffic Systems, Inc., a Delaware corporation ("NTS") and the City of Costa Mesa, a municipal corporation ("City" or "Municipality").

WHEREAS, NTS and City entered into an agreement dated July 15, 2002 for traffic signal violations video-monitoring services, as amended on April 30, 2003, and July 31, 2003, (the "Agreement"); and

WHEREAS, NTS and City now wish to further amend the Agreement to amend the fixed monthly fee and the Term of the Agreement;

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Section 2 of the Agreement is hereby amended to provide that the Installation Date shall be deemed to be December 1, 2003 (at installation of Anton and Bristol intersection cameras). For existing Installed Approaches, upon expiration of the Initial Term, December 1, 2008, the parties hereby agree to extend the term of the Agreement for three additional years, to and including December 1, 2011 on the terms of the Agreement as modified herein. From and after January 1, 2012, the term of the Agreement for the currently existing Installed Approaches shall be from month to month, subject to thirty (30) days' written notice of termination. The Initial Term of the Agreement, as amended, with respect to each of the new approaches provided for in this Addendum shall be five (5) years after the System becomes installed and operational at each such new approach.

2. Section 3.4 of this Agreement is hereby deleted and replaced by the following:

"3.4 Either Nestor or Municipality may terminate this Agreement, or provision of any Service or any part of the System, without liability, and with no termination or cancellation fee charge to Municipality, on thirty (30) days' advance notice, if either Nestor or Municipality reasonably concludes that potential or actual liability of Nestor or Municipality to third parties arising out of or in connection with the System makes the program impractical, uneconomical, or impossible to continue."

2. Section 4.1 of the Agreement is hereby deleted and replaced by the following:

"4.1 The Municipality shall pay Nestor a monthly fee (the "Monthly Per Approach Fee") for each Installed Approach per table below.

Approach Type	Existing Approaches
Primary Enforcement Camera	\$ 3,500
Primary & Secondary Enforcement Camera	\$ 4,800

Approach Type	New Approaches
Primary Enforcement Camera	\$ 4000
Primary & Secondary Enforcement Camera	\$ 5,300

A primary enforcement camera system is the first camera at an approach and can cover up to three lanes of traffic, depending on intersection configuration limitations and as determined by City. The camera may enforce straight, left and right traffic flow depending on the intersection. A secondary enforcement camera system is a second camera at an approach which may be used if configuration and volumes at an intersection require a second enforcement camera system to effectively enforce a specific traffic flow at an approach (such as a dedicated left or right turn or very large intersections).

The per approach fees set forth above shall take effect for all existing cameras/installed approaches, regardless of upgrade status, as of December 1, 2008. These fees shall be effective for all new installations upon commencement of full operations (i.e., following completion of warning period).

"Installed Approach" shall mean any enforced direction of travel on an individual access road or street to any intersection that is monitored by the System and through which the Municipality has commenced issuing citations, either through use of a primary enforcement camera or a secondary enforcement camera or both. If and to the extent that (1) an Installed Approach subject to a Monthly Per Approach or Camera Fee is not capable of detecting violations and/or issuing Transmitted Violations; or (2) Nestor is unable to print and/or mail Citations, in either case, for a period of more than one (1) consecutive day in any calendar month as a result of system malfunctions not caused by the Municipality or an event described in section 9.9 of the Agreement (collectively and each individually, an "Event"), Nestor shall allow a credit against the Monthly Per Approach Fee for that month equal to: the respective approach's, camera's or the System's (as applicable) Monthly Per Approach Fee multiplied by the total number of days the approach, camera or System, as the case may be, was incapable of detecting violations, issuing Transmitted Violations and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days.

If the City is unable to issue citations from an intersection as a result of legislative, judicial, or similar reasons, the City may request that the operation of the respective intersection be suspended. During the suspension period, the City shall have the option to either: (i) pay Nestor a monthly fee for each suspended approach of \$1,950.00, or (ii) suspend the Term as it relates to that suspended approach and add the number of months the approach is suspended to the end of the Initial Term for that approach. The City shall advise Nestor in writing of the option being selected on or prior to suspension

of operation at the respective approach. No fees shall be charged by NTS for the initial 30 day warning period, if used for a new approach, and this 30 day warning period shall not be considered part of the "Term" as it relates to the new approach.

This program will be operated as a safety program. In addition, most communities regularly look for ways to create efficiencies and control spending. For these reasons, NTS shall perform an initial annual financial review of the program, and every twelve months after the first annual review, and agrees to negotiate in good faith regarding its service fees (down or up, but not to exceed the service fees in Section 4.1) if it is determined that fees paid to NTS exceed net program revenues being realized. If requested by NTS, the Municipality agrees to provide alternate intersection approaches and, subject to mutual agreement, support the relocation of under performing approaches. If the parties are unable to agree on a renegotiated fee, the City shall have the right to terminate the agreement upon thirty (30) days' written notice with no termination or cancellation fee.

3. Section 4.3 of the Agreement is hereby deleted and replaced by the following:

"

4.3 Municipality acknowledges and agrees that:

- (i) In the event this Agreement is terminated by Nestor pursuant to Section 3.1, or the Municipality pursuant to Section 3.9 prior to the expiration of the Initial Term, the termination and cancellation fee shall be \$3,500.00 per installed approach multiplied by one half (1/2) the number of months in the Remaining Term. The "Remaining Term" shall equal the number of months in the Initial Term of this Agreement from the Installation Date (i.e., 60 months) minus the whole number of months from the Installation Date to the date of termination.
- (ii) In the event this Agreement is terminated pursuant to section 3.7 or 3.8 prior to thirty six (36) months from the Installation Date, there shall be a termination and cancellation fee of \$3,500.00 per installed approach multiplied by one half (1/2) the number of months in the Remaining Term. In the event this Agreement is terminated pursuant to Section 3.7 or 3.8 subsequent to the expiration of the 36 month anniversary of the Installation Date, there shall be no termination or cancellation fee. "

4. ~~Section 5.5 of the Agreement is hereby deleted and replaced by the following:~~

"5.5. (a) Except as otherwise required by law, during the term of this Agreement, the Municipality shall not modify the yellow or all red phases of a traffic signal over which it has control without advising Nestor in advance of such modification; provided, however, that in the event of an emergency, the Municipality may make such modifications, provided it provides notice to Nestor within forty-eight (48) hours after any such modification. In the event that CalTrans modifies the yellow or all red phases of any traffic signal over which it has primary control, the Municipality shall notify Nestor within forty-eight (48) hours of learning of such modification. In the event any such modification materially adversely affects any Installed Approach(es) as reasonably determined by Nestor and upon written notice from Nestor, then (i)

upon the Municipality's written direction, Nestor shall relocate the affected Installed Approaches to other intersections if the system still complies with the law as a whole, for which relocation the Parties shall share the costs equally, or if such written direction is not given within ninety (90) days after Municipality receives written notice from Nestor, (ii) this Agreement with respect to such Installed Approach(es) shall be deemed terminated without any termination or cancellation fee.

(b) If relocation of an Installed Approach is mandated by State law, Municipality has the option of either terminating the Agreement at no cost with respect to the affected Installed Approach, allowing Nestor to relocate the cameras to another location which meets the minimum criteria for installation of cameras as part of the system, within City's boundaries, at Nestor's sole expense (in which event, such installation shall be treated as a newly installed approach), or of relocating the system installed at that Installed Approach to another agreed upon location within the City's boundaries, for which the Parties shall share the cost of relocation equally (in which event, the date of installation at the original location shall be deemed to be the Installation Date for the relocated approach). All design work, permits and installation requirements for relocation shall be performed by Nestor or its subcontractors.

5. The City agrees to expand the current number of Installed Approaches to a minimum of twenty (20) approaches. The parties agree that there are currently fifteen (15) Installed Approaches, with a total of twelve (12) primary and three (3) secondary cameras. The City has been billed for thirteen (13) Installed Approaches. Future billings for the existing Installed Approaches shall be made in accordance with Section 4.1, as amended, as applied to the camera placement/location set out in Exhibit A (as modified herein). Seven (7) additional Installed Approaches/primary cameras will be added at four (4) new intersections. Additional billed approaches in excess of (twenty two) 22 may be added by mutual agreement. Installation of additional approaches shall not change the Installation Date provided for herein or extend the Initial Term of the Agreement as it relates to previously Installed Approaches. Existing approaches (except those at Newport Boulevard and 17th and Newport Boulevard and 19th) identified in Exhibit A (as modified herein) shall be upgraded to Nestor's digital system no later than November 1, 2008. The approaches located at Newport Boulevard and 17th and Newport Boulevard and 19th shall be upgraded within thirty (30) days of receiving CalTrans approval of the plans for such upgrades. Nestor shall submit upgrade plans to CalTrans for approval for these approaches no later than sixty (60) days after the effective date of this amendment. Upgrading the existing approaches shall not be considered to be a new installation date as to existing approaches/cameras. ~~New approaches identified in Exhibit A (as modified herein) shall be installed on or before the dates to be mutually agreed upon.~~

6. The parties agree that City shall be entitled to a total discount of \$224,000.00 against fees to be paid pursuant to this amendment. The discount has been calculated to reflect the period from February 11, 2005 to June 8, 2005 when citations could not be issued at the approaches at Newport Boulevard and Seventeenth Street, Newport Boulevard and Nineteenth Street and a credit of \$21,000.00, reflecting the period from February 11, 2005 to March 14, 2005 when citations could not be issued at the approaches on Bristol and Anton. The total discount of \$245,000.00 shall be amortized and applied to City's monthly fees during the period

commencing on June 1, 2008 and ending on December 1, 2011, requiring a discount to the City in the amount of \$5,833.33 per month (42 payments) during this period.

7. Neither party shall assign its obligations under this Agreement to any other person or entity without the written consent of the other party.

8. Exhibit A to the Agreement shall be modified as follows:

Section 1.1 is hereby deleted and replaced with the following:

"1.1 The System. The System shall be comprised of equipment capable of monitoring the following traffic approaches at the following intersections:

<u>Intersections</u>	<u>Approach Enforced</u>	<u>Camera(s) (lanes)</u>
EXISTING INSTALLED APPROACHES:		
Harbor & Adams	Northbound	Primary (straight)
	Eastbound	Primary (straight)
	Eastbound	Secondary (left)
Bristol & Anton	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Westbound	Primary (left)
Newport & 17 th	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Westbound	Primary (straight)
	Eastbound	Primary (left)
	Eastbound	Secondary (straight)
	Southbound	Secondary (left)
Newport & 19 th	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Eastbound	Primary (straight)
	Eastbound	Secondary (left)
	Southbound	Secondary (left)

NEW INSTALLED APPROACHES:		
Harbor & Gisler	Northbound	Primary (straight/left)
	Southbound	Primary (straight/left)
Harbor & South Coast	Northbound	Primary (straight/left)
	Southbound	Primary (straight/left)
Harbor & Baker	Southbound	Primary (straight/left)
Victoria & Placentia	Northbound	Primary (straight/left)
	Westbound	Primary (straight/left)

Section 1.5.1 is hereby deleted and replaced with the following:

1.5.1 Nestor shall submit plans and specifications to the Municipality for review and approval of the general placement of poles and cabinets within City right-of-way, which review and approval shall not be unreasonably withheld, delayed or conditioned. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to

practice in the State in which the Municipality is located. Nestor shall provide Municipality with at least three sets of drawings showing the Geometric layout and pole installation plans. Nestor shall also provide Municipality with at least one set of drawings of the wiring for the System Circuitry and shall also transmit said drawings to Municipality in AutoCAD format for City's records. The City review of plans and specifications excludes review or approval of the system's internal circuitry, or electronic / technical / operational configuration and camera/lighting assemblies, which are exclusively Nestor's responsibility.

Section 1.5.2 is hereby deleted and replaced with the following:

1.5.2 If commercially reasonable and if "Capacity" (as that term is defined below) exists, all wiring shall be internal to equipment (not exposed) and underground in existing conduits or, if no Capacity exists in existing conduits, in conduits to be furnished and installed by Nestor at its own expense. Use of existing City conduit shall be authorized solely at the determination of the City per specific installation. Should Nestor's use of City conduit capacity be required for a future City improvement, Nestor shall remove and separate System wiring upon City request at Nestor's sole expense.

Section 1.5.4 is hereby deleted and replaced with the following:

1.5.4 The system shall not be mounted on City traffic signal poles.

Section 1.5.5 is hereby deleted and replaced with the following:

1.5.5 The System poles and foundations shall conform to current CalTrans' standards. Nestor shall be responsible for all costs associated with installing/upgrading/replacing any poles and foundations necessary to install the System equipment to meet CalTrans' requirements.

Section 1.5.8 is hereby added:

1.5.8 In the event that any system equipment, foundations, poles and/or electrical connection is required to be relocated due to street widening, street reconstruction, or other modification to the streets or intersections where particular portions of the system are installed, the City or other public entity with ownership of the affected streets shall bear the cost of the street widening, street reconstruction or modification, but Nestor shall bear the cost of relocating its foundations, poles, electrical connection and system equipment which would be required, in the reasonable judgment of the City Engineer, to be relocated at the time of such street widening,

street reconstruction or modification. The parties shall coordinate their work to minimize the disruption in the use of the affected street and in the use of the system equipment. Any work in the public right of way owned or controlled by CalTrans shall be subject to any permit requirements of CalTrans. Any work in the public right of way owned or controlled by the City shall be subject to any permit requirements of the City, but the City shall waive any City fees which Nestor would otherwise be required to pay for such work

9. All terms not herein defined shall have the same meaning and use as set forth in the Agreement.

10. All other terms, conditions and provisions of the Agreement, as amended by the First and Second Addendums thereto, not in conflict with this Third Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hand by their duly authorized representative as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

By: Clarence A. Davis
Name: Clarence Davis
Title: Chief Executive Officer

CITY OF COSTA MESA

By: C. R. Bova
Mayor

APPROVED AS TO CONTENT

By: Paul Garner for Sgt Shortstack
Project Manager

APPROVED AS TO FORM

By: Timothy Hall Barlow
City Attorney

ATTEST:

Julie Folcik
Julie Folcik, City Clerk

**ADDENDUM NUMBER FOUR
TO
TRAFFIC SIGNAL VIOLATION VIDEO-ENFORCEMENT
SYSTEM SERVICES AGREEMENT**

This Addendum Number Four is made and entered into this ____ day of _____, 200__ (**"Effective Date"**) by and between Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at 42 Oriental Street, Providence, RI 02908 (**"NTS"**), and the City of Costa Mesa, a municipal corporation of the State of California having an address of 77 Fair Drive, Costa Mesa, CA 92626 (the **"Municipality"**, and together with NTS, the **"Parties"**, and each singularly, a **"Party"**).

WHEREAS, the Parties entered into a Traffic Signal Violation Video-Monitoring System Services Agreement on July 15, 2002, as amended by Addendum Number One on April 30, 2003, as further amended by Amendment Number Two on July 31, 2003, as further amended by Addendum Number Three on June 3, 2008, (as so amended, the **"Agreement"**); and

WHEREAS, the Parties now wish to further amend the Agreement to address a recent California Superior Court Appellate Division decision.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Pursuant to the Judgment on Appeal from the Superior Court, County of Orange, North Justice Center, as issued on November 21, 2008 by The Honorable Robert J. Moss, Presiding Judge, in Case No. 30-2008-93057 relating to another City's agreement with Nestor (the **"Decision"**), a portion of Section 4.1 of Addendum Number Three (the **"Cost Neutral Provision"**) is hereby suspended and shall no longer be in effect so long as the Decision is considered controlling law in the County of Orange, California. Specifically, the parties suspend the operation of the following language in Section 4.1: "and agrees to renegotiate its service fees (down or up, but not to exceed the service fees in Section 4.1) if it is determined that fees paid to NTS exceed net program revenues being realized." and "If the parties are unable to agree on a renegotiated fee, the CITY will have the right to terminate the agreement upon thirty (30) days written notice with no termination or cancellation fee."
2. The final paragraph of Section 4.1 shall now read:
3. This program will be operated as a safety program. In addition, most communities regularly look for ways to create efficiencies and control spending. For these reasons, NTS will perform an initial annual performance and financial review of the program on the first anniversary of this Addendum, and every twelve months after the first annual review to determine whether the program is continuing to improve public safety in the City. If requested by NTS, the CITY

agrees to provide alternate intersection approaches and subject to mutual agreement, support the relocation of approaches where the program is not effective. If the parties are unable to agree on revisions to the program which in the view of CITY are sufficient to maximize the public safety benefits of the program, the CITY will have the right to terminate the agreement upon thirty (30) days written notice with no termination or cancellation fee.”

4. If and when the Decision is overturned, overridden by the Legislature, or for any other reason whatsoever is no longer controlling California law as to the City of Fullerton and if and when a Cost Neutral Provision is allowed under California Vehicle Code Section 21455.5(g), the Parties agree that the Cost Neutral Provision of the Agreement shall automatically go back into effect and shall require the parties to meet and confer regarding the monthly fees paid by the Municipality to NTS if required under the suspended provisions of section 4.1. The provision does not require the parties to agree on any specific fees, but simply to meet and confer.
5. All terms not defined herein shall have the same meaning and use as set forth in the Agreement.
6. All other terms, conditions and provisions of the Agreement, as amended, not in conflict with this Addendum Number Four shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hand by their duly authorized representative as of the day and year first written above.

NESTOR TRAFFIC SYSTEMS, INC.

By: _____

Name: Clarence A. Davis

Title: Chief Executive Officer

CITY OF COSTA MESA, CALIFORNIA

By: _____

Name:

Title: Mayor